

Glen McGorty
10/30/2018

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3)
4 UNITED STATES SECURITIES AND)
EXCHANGE COMMISSION,)
Plaintiff,) Case No.
5) 17-cv-8223(PKC)
vs.)
6 MOHAMMED ALI RASHID,)
Defendant.)
8 _____)

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11 DEPOSITION OF GLEN MCGORTY, ESQ.
(Volume 1, pages 1 - 238 inclusive)
13 Tuesday, October 30, 2018
14 10:23 a.m.
15 Taken at:
16 Securities and Exchange Commission
17 200 Vesey Street
18 New York, New York

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24 Reported by:
MONIQUE CABRERA,
25 JOB No. 181030PXL

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11 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER
12 (NONE)
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<p>1 EXHIBITS</p> <p>2 GLEN MCGORTY</p> <p>3 Number Page Description</p> <p>4 Exhibit 1B 18 Witness CV (retained by counsel)</p> <p>5 Exhibit 1A 20 Subpoena</p> <p>6 Exhibit 2 27 A43628-30 E-mail string</p> <p>7 Exhibit 3 32 AR37-38 E-mail string</p> <p>8 Exhibit 4 74 659-74 Apollo Travel and Expense</p> <p>9 Exhibit 5 57 E-mail from Susan Maisel</p> <p>10 Exhibit 6 79 42137-39 E-mail string</p> <p>11 Exhibit 7 83 A109063-69 E-mail string</p> <p>12 Exhibit 8 87 E1376-78 Letter dated Nov. 18,</p> <p>13 2016</p> <p>14 Exhibit 8A 90 Declaration of Roberto Finzi</p> <p>15 Exhibit 9 96 A109059-109062 Spreadsheet</p> <p>16 Exhibit 10 107 A109070-71 American Express</p> <p>17 statements</p> <p>18 Exhibit 13 117 A109332-34 Two Spreadsheets</p> <p>19 Exhibit 14 131 A3994-96 E-mail string</p> <p>20 Exhibit 15 133 A109-3940</p> <p>21 Exhibit 16 146 A3989-91 Spreadsheet</p> <p>22 Exhibit 17 147 A109342-47 Spreadsheet</p> <p>23 Exhibit 19 151 A109355-57</p> <p>24 Exhibit 20 153 A109358-63 E-mail string</p> <p>25 Exhibit 21 154 A109364-71 E-mail string</p>	<p>1 TUESDAY, OCTOBER 30, 2018</p> <p>2 A.M. SESSION</p> <p>3 MR. THOMPSON: Good morning, Mr. McGorty.</p> <p>4 MR. KEHOE: Before we begin I just want to</p> <p>5 put on the record one thing. We are going to invoke</p> <p>6 the common-interest privilege for the month of July</p> <p>7 across the entire timeframe that Mr. McGorty and</p> <p>8 Crowell and Moring were dealing with either Paul</p> <p>9 Weiss or anybody involved in this. All those were</p> <p>10 subject to Rule 408 negotiations, all of those</p> <p>11 proceedings, and that includes both July up through</p> <p>12 August 1st and thereafter.</p> <p>13 We preserve all of those objections and, of</p> <p>14 course, we will be invoking as appropriate our</p> <p>15 instructions to the witness not to answer two</p> <p>16 questions that will get into the confidential</p> <p>17 interests during July -- during July and ending</p> <p>18 midday August 1st.</p> <p>19 MR. THOMPSON: Mr. Kehoe, we did speak or</p> <p>20 e-mail before the deposition and it was my</p> <p>21 understanding that you were not going to assert a</p> <p>22 blanket common-interest objection, but that we are</p> <p>23 going to take it question by question.</p> <p>24 MR. KEHOE: That is always appropriate. In</p> <p>25 response to that, you had asked me what I was going</p>
<p>5</p> <p>1 EXHIBITS(Continued)</p> <p>2 Number Page Description</p> <p>3 Exhibit 22 156 A42426-27 E-mail string</p> <p>4 Exhibit 23 168 A43573-80 McGorty's E-mail</p> <p>5 Exhibit 24 170 A109379-80 and 109381</p> <p>6 Exhibit 25 185 A109385-86</p> <p>7 Exhibit 26 187 A108719 E-mail [not attached]</p> <p>8 Exhibit 27 190 Rashid 2499-2507 [not attached]</p> <p>9 Exhibit 28 193 A41654-673 1/8/2014</p> <p>10 [Not attached]</p> <p>11 Exhibit 29 197 A42345-46 E-mail string</p> <p>12 [Not attached]</p> <p>13 Exhibit 30 198 A1298-1317 Apollo Global</p> <p>14 management review</p> <p>15 [Not attached]</p> <p>16 Exhibit 31 201 A43560-61 E-mail string</p> <p>17 [Not attached]</p> <p>18</p> <p>19</p> <p>20 *** EXHIBITS BOUND SEPARATELY ***</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 to object to and not object to, which I thought was</p> <p>2 premature, as I noted in my e-mail and that we will</p> <p>3 take it question by question, but as far as a</p> <p>4 blanket objection, no, there will not be a blanket</p> <p>5 objection.</p> <p>6 MR. THOMPSON: Okay. We will go question</p> <p>7 by question.</p> <p>8 EXAMINATION BY</p> <p>9 MR. THOMPSON:</p> <p>10 Mr. McGorty, I know you are a well-</p> <p>11 experienced lawyer so I am going to dispense with</p> <p>12 the usual ground rules for deposition.</p> <p>13 I will say that we will be looking at a</p> <p>14 number of documents today. We premarked exhibits</p> <p>15 and we have got 3 exhibit binders. By and large the</p> <p>16 documents will reflect conversations or meetings and</p> <p>17 I am going to be asking about your recollection of</p> <p>18 those conversations or meetings and also whether you</p> <p>19 have any records of those events.</p> <p>20 Some of the documents will include</p> <p>21 spreadsheets that list expenses and, as you may</p> <p>22 know, at issue in this case is over 1,000 expenses.</p> <p>23 We are not going to go expense by expense, so when I</p> <p>24 hand you a document that is two inches thick,</p> <p>25 believe me I will not, with very few exceptions, be</p>

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1 asking you about any expenses. I will be asking you
2 about the setup of the documents to the extent you
3 can define certain terms used in the documents, but
4 not individual expenses.

5 This is all by way of saying that it's my
6 hope that you don't need to review 1,000 expenses
7 otherwise we will be here for 3 weeks.

8 You have heard our discussion about
9 objections, so it is my intention to ask the
10 questions that I would otherwise ask and we will see
11 what objections are made and we will see where it
12 goes.

13 So with that, do you have any questions?

14 **A.** No.

15 **Q.** Let's get started.

16 Mr. McGorty, what did you do to prepare for
17 the deposition today?

18 **A.** I have met with counsel, Tom Hanusik, who
19 is sitting to my left and Daniel Giffuni. I have
20 spoken with and met with counsel representing Mr.
21 Rashid, Mr. Kehoe, to Tom's left, on a couple of
22 occasions and that's pretty much it.

23 **Q.** Mr. Kehoe is not acting as your counsel in
24 this case?

25 **A.** He is not.

1 **Q.** As you know, we don't want you to
2 speculate, but that's your best recollection?
3 **A.** I just want to make to make it clear that
4 that's my best guess.

5 **Q.** What was the subject of that discussion?
6 MR. KEHOE: Objection. If it calls for
7 anything in the attorney-client privilege area, we
8 have instructed the witness not to answer.

9 **Q.** Did the subject involve your prior
10 representation of Mr. Rashid?
11 **A.** Yes, I mean we have never had a
12 conversation beyond the substance of our working
13 relationship.

14 **Q.** Was that a phone call or a meeting or what?
15 **A.** I don't remember. I don't remember.
16 **Q.** Did any one else participate?
17 **A.** I don't remember.
18 **Q.** What did you discuss with Mr. Kehoe in
19 preparation for your deposition?

20 MR. KEHOE: I will object to the extent it
21 calls for conversations with a perspective client
22 and I instruct the witness not to answer.

23 **Q.** Do you intend to follow that instruction?
24 **A.** I think I have to.
25 **Q.** Are you acquainted with Paul Weiss partner

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11

1 **Q.** When you met or spoke with Mr. Kehoe, was
2 Mr. Hanusik also present?

3 **A.** For at least one of those meetings.

4 **Q.** But for one meeting he was not present?

5 **A.** That's true, I believe.

6 **Q.** Did you review any documents in preparation
7 for the deposition?

8 **A.** I have seen a few documents, a handful of
9 documents that I looked at.

10 **Q.** Did that refresh your recollection about
11 the events discussed therein?

12 **A.** I don't think I saw anything that refreshed
13 my recollection beyond what I remember.

14 **Q.** Have you reviewed the SEC's complaint in
15 this case?

16 **A.** I have not.

17 **Q.** Have you reviewed any other court filings
18 or discovery in this case?

19 **A.** I have not.

20 **Q.** When was the last time that you
21 communicated in any way with Mr. Mohammed Ali
22 Rashid?

23 **A.** I am going to speculate, I am going to
24 guess it's been at least two years, maybe; year and
25 a half to two years, approximately.

1 Roberto Finzi?

2 **A.** Yes.

3 **Q.** Have you had any communications with Mr.
4 Finzi regarding this case?

5 **A.** Not for years.

6 **Q.** Are you aware that Mr. Finzi executed a
7 declaration in this case?

8 **A.** I think I heard that.

9 **Q.** But you have not seen the declaration?

10 **A.** I think that's right.

11 **Q.** Do you know what Mr. Finzi stated in his
12 declaration?

13 **A.** I do not specifically, no.

14 **Q.** Your firm is Crowell & Moring; correct?

15 **A.** Crowell & Moring.

16 MR. HANUSIK: Can I clarify one thing for
17 the record, because you asked him if he spoke to Mr.
18 Finzi about this case. By "this case" do you mean
19 the entire matter beginning with the SEC
20 examination, because obviously they had a lot of
21 communications.

22 MR. THOMPSON: I am referring to the filed
23 case.

24 MR. HANUSIK: I just want to make sure. I
25 think that's how he was answering but sometimes

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12

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1 things are not clear.
 2 **Q.** So Crowell?
 3 **A.** You've got it.
 4 **Q.** I should know that. I was a law student
 5 many moons ago and I think I interviewed with
 6 Crowell and with Tipco, was it?
 7 **A.** I never got to meet him.
 8 **Q.** Is Crowell being compensated for its time
 9 with respect to the SEC case against Mr. Rashid?
 10 **A.** Presently?
 11 **Q.** Presently.
 12 **A.** I don't believe so, no.
 13 **MR. HANUSIK:** I can answer that
 14 affirmatively, no.
 15 **Q.** To your knowledge has there been any
 16 discussion about compensation?
 17 **A.** Not to my knowledge.
 18 **Q.** Okay. Let's go back to Crowell's
 19 representation of Mr. Rashid back in 2013. Did
 20 someone refer Mr. Rashid to Crowell?
 21 **A.** Yes.
 22 **Q.** Who was that?
 23 **A.** I believe it was someone at Paul Weiss, I
 24 am not certain who it was.
 25 **Q.** Do you know to whom the referral was made

13

1 investigations?
 2 **A.** With Paul Weiss?
 3 **Q.** Yes.
 4 **A.** Not prior to this.
 5 **Q.** With other law firms, have you been
 6 involved in situations where Crowell was
 7 representing one party in an internal investigation
 8 and another law firm was representing a different
 9 party?
 10 **MR. HANUSIK:** Can I just clarify? You said
 11 previously, so your question is limited to the
 12 timeframe before July of 2013 from when Mr. McGorty
 13 joined the firm, which was December of 2012?
 14 **MR. THOMPSON:** That's correct.
 15 **MR. HANUSIK:** So just that 7 month period?
 16 **A.** I believe so, but I am not certain what
 17 specifically, whether I did something in those 6
 18 months that would qualify under your definition.
 19 **Q.** Leaving aside Rashid and Apollo, were there
 20 any instances when you believed the common- interest
 21 understanding existed and was not embodied in a
 22 written agreement where your firm was representing
 23 one party in an internal investigation and another
 24 firm was representing another party?
 25 **MR. KEHOE:** Are we talking about another

15

1 specifically?
 2 **A.** I think it was made to my partner Daniel
 3 Zelenko, Z E L E N K O.
 4 **Q.** Have you spoke with Mr. Zelenko in
 5 preparation for your deposition today?
 6 **A.** I have spoken to him since I knew I was
 7 coming to be deposed, so yes.
 8 **Q.** What did you discuss?
 9 **MR. KEHOE:** If it calls for any discussion
 10 about your conversations with Mr. Rashid or
 11 involvement with Mr. Rashid during the operative
 12 timeframe, I instruct you not to answer.
 13 **MR. HANUSIK:** I would also add that to the
 14 extent that Mr. Zelenko is going to be deposed, we
 15 will also be representing him. So if it calls for
 16 any discussion around preparation for the
 17 deposition, I would instruct you not to answer.
 18 **MR. THOMPSON:** It sounds like you can't
 19 answer it.
 20 **Q.** Have Paul Weiss and Crowell previously
 21 represented different parties in internal
 22 investigations?
 23 **A.** I am not certain.
 24 **Q.** You didn't participate in any such
 25 representation of different parties in internal

14

1 instance, putting aside the --
 2 **MR. THOMPSON:** Leaving aside Rashid and
 3 Apollo?
 4 **A.** Before or since?
 5 **Q.** Yes.
 6 **A.** Yes.
 7 **Q.** And the question was whether in such a
 8 circumstances you believe a common interest existed
 9 despite the absence of a written agreement to that
 10 effect?
 11 **A.** Yes.
 12 **Q.** Can you identify those instances?
 13 **MR. HANUSIK:** No, you are asking him to
 14 identify existing clients or client relationships
 15 that are non-public?
 16 **Q.** Without identifying clients, can you
 17 describe the instances?
 18 **A.** I have represented individuals in many
 19 cases since entering private practice where there
 20 was a non-written, common-interest privilege and
 21 understanding with the counsel representing the
 22 employer or in some instances former employer of
 23 that individual.
 24 **Q.** Why would a common-interest understanding
 25 be left unwritten?

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<p>1 A. I don't know of any reason it would be 2 intentionally unwritten, but I know of instances, I 3 believe, where it was written and instances where it 4 was unwritten without a particular reason for it 5 being written or unwritten. 6 Q. So no particular reason why it would not be 7 written? 8 A. That's correct. 9 Q. Through July, let's take it through the end 10 of 2013, did you have a practice of marking 11 communications with other parties that you deemed to 12 be settlement communications as settlement 13 communications? 14 A. I don't recall having that practice one way 15 or the other. 16 Q. So you may have had settlement 17 communications without having a header or a footer 18 saying subject to Rule 408 of the Federal Rules of 19 Evidence? 20 A. That's likely, that's true, I think. 21 Q. So I have your bio here from the website. 22 I believe it's the current bio. I am not going to 23 mark it as an exhibit, but I will hand it to you. 24 MR. KEHOE: You have to mark it as an 25 exhibit if you are going to hand it to him.</p>	<p>1 tell me what that representation involved? 2 A. I think that was purely an internal inquiry 3 initiated by I believe the client, of a concern 4 about particular expenses that either were going to 5 be or may have been scrutinized by his employer. I 6 don't recall if it had come to light that the 7 employer, with the employer, that there had been a 8 concern from the individual that we represented, but 9 I remember that. 10 That was certainly all internal and it may 11 not have even reached the employer's attention that 12 we were asked by the individual to help give him 13 guidance on a expense-related problem. 14 Q. So the employer was not involved in the 15 investigation, am I understanding you correctly? 16 A. That's my recollection. At most it was the 17 employer's knowledge, like the employer had some 18 idea about it, but I don't believe so when we 19 represented that individual. I am doing my best to 20 recall. There was definitely no external element as 21 there was with the Rashid case, but that's what I 22 believe it was. 23 Q. You can set that aside. 24 In 2013, what systems did Crowell have in 25 place to check for conflicts when a representation</p>
<p>17</p>	<p>19</p>

1 **MR. THOMPSON:** I will mark it as an
 2 exhibit.
 3 **MR. KEHOE:** Please do.
 4 **MR. THOMPSON:** We will mark this Exhibit
 5 1B.
 6 (Exhibit No. 1B was so marked for
 7 identification, as of this date.)
 8 **Q.** Mr. McGorty, what I want to refer you to is
 9 the instances that you referred to handling matters
 10 in the area of what is on page 2?
 11 **A.** Yes.
 12 **Q.** The bottom third of the page: "Executive
 13 employment-related investigations."
 14 **A.** Okay.
 15 **Q.** And the second bullet point is a former
 16 principal and senior partner of an international
 17 private equity firm in an SEC examination and
 18 investigation.
 19 Does that refer to your representation of
 20 Mr. Rashid?
 21 **A.** I think so.
 22 **Q.** The first bullet point refers to a vice
 23 president of an international energy conglomerate in
 24 an internal expense-related employment inquiry.
 25 Without identifying the parties involved, can you

1 was proposed?
 2 **A.** We have a conflicts department with whom we
 3 communicate over phone and e-mail to raise both
 4 identified potential clients, adversarial parties
 5 and other related parties, so they can run conflict
 6 before we can take on a matter.
 7 **Q.** Did Crowell run a conflicts check with
 8 respect to the proposed representation of Mr. Rashid
 9 in 2013?
 10 **A.** I assume so, only we couldn't have taken
 11 the matter if we hadn't, so yes.
 12 **Q.** You were not involved in that check?
 13 **A.** I don't remember it.
 14 **Q.** Let's look at, I am going to hand out some
 15 binders now. I am handing you what has been
 16 designated as 1 of 3 of our exhibit binders and I am
 17 going to hand them to your counsel.
 18 Let's go to what is designated as Exhibit
 19 1A.
 20 **A.** 1 is the subpoena and attachment.
 21 **Q.** I'm sorry. It's actually marked, should be
 22 marked down at the bottom.
 23 **MR. THOMPSON:** Just for the record, we are
 24 providing the Reporter with electronic versions of
 25 all of these documents, as well as the hard copy of

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<p>1 the premarked exhibits. We may not use all of the 2 premarked exhibits, but they will be identified in 3 the transcript.</p> <p>4 Let me know when you are ready to respond 5 to questions.</p> <p>6 A. Sure.</p> <p>7 Q. Is this, in fact, the retainer letter by 8 which Crowell was retained by Mr. Rashid?</p> <p>9 A. That's what it looks like.</p> <p>10 Q. You have no reason to believe it's not?</p> <p>11 A. No.</p> <p>12 Q. Are you aware of any other retainer letters 13 between Crowell and Mr. Rashid?</p> <p>14 A. I am not.</p> <p>15 Q. Would you have seen the retainer letter on 16 or about its date, July 12, 2013?</p> <p>17 A. This one was sent out by Mr. Zelenko so I 18 don't know if I would have necessarily seen this.</p> <p>19 Q. Are you aware of any written or unwritten 20 agreement with Mr. Rashid to modify the scope of 21 engagement as stated in the first paragraph of the 22 retainer letter?</p> <p>23 A. No.</p> <p>24 Q. Was there ever a change in Crowell's scope 25 of engagement?</p>	<p>1 A. It's a distinction we actually did not make 2 and don't often make.</p> <p>3 Q. The retainer letter, on the first page, in 4 the last paragraph, refers to an offer by Apollo to 5 pay invoices for Crowell's fees. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Did anyone other than Apollo ever pay any 8 of Crowell's fees?</p> <p>9 A. Ever? I believe at some point Mr. Rashid 10 did.</p> <p>11 Q. At what point was that?</p> <p>12 A. Subsequent to his separation from Apollo. 13 I just don't remember the timeline, but that's my 14 understanding.</p> <p>15 Q. And in 2013, did Mr. Rashid personally pay 16 any fees?</p> <p>17 A. I don't remember when it began and ended.</p> <p>18 Q. Was there a separate agreement between 19 Crowell and Apollo with respect to the payment of 20 legal fees for representation?</p> <p>21 A. I am not aware of one.</p> <p>22 Q. Did the arrangement for Apollo to pay 23 Crowell's legal fees ever change, perhaps after Mr. 24 Rashid's separation?</p> <p>25 A. I believe that's probably right.</p>
<p>21</p>	<p>23</p>

1 **A.** I don't know.

2 **Q.** Did Crowell ever advise Mr. Rashid with
3 respect to his income taxes?

4 **A.** I don't know.

5 **Q.** I take it Mr. Zelenko was the billing
6 partner with respect to this engagement?

7 **A.** I think so.

8 **Q.** What was the your role?

9 **A.** I don't know if I had an official title. I
10 just helped represent Ali Rashid in the matter for
11 this period of time.

12 **Q.** So Mr. Zelenko is the lead partner but you
13 were working -- would it be fair to say you were
14 working on the matter on a day-to-day basis?

15 MR. HANUSIK: I will object to the
16 characterization "lead." You used the phrase
17 billing partner, he agreed with that.

18 **Q.** Okay, with that amendment.

19 **A.** I suppose, not to the exclusion of Dan, but
20 my recollection is during the relevant time period
21 of July through September of 2013, I was probably
22 more engaged on the day to day with Mr. Rashid than
23 Dan was.

24 **Q.** Would you regard yourself as having been
25 the lead partner on the matter?

22

1 **Q.** Exhibit 1A also includes the billing
2 statements.

3 MR. THOMPSON: And for the record, Exhibit
4 1A consists of Crowell's production, document
5 production response to the SEC subpoena in this
6 case. Obviously the bills were not attached to the
7 original retainer letter because they were later in
8 time, but what I would like to do for present
9 purposes, Mr. McGorty, is just to identify the
10 timekeepers listed in the billing statement.

11 If we go to Bates Number CMAR SEC, I am not
12 going to repeat all of the 0's, but it's 5, do you
13 see that page 9, August 2013 statement.

14 **A.** Yes.

15 **Q.** Under "Professional Services," GM, I take
16 it that's you?

17 **A.** Yes.

18 **Q.** DLZ, I take it that's Mr. Zelenko?

19 **A.** Yes.

20 **Q.** If we go to page 7, under the July 10 entry
21 -- I am sorry, July 11th entry, there is an NK?

22 **A.** Yes.

23 **Q.** Is that a Ms. Namrata Kotwani?

24 **A.** Sure.

25 **Q.** Do you recall any other timekeepers billing

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<p>1 time for this project, any other lawyers?</p> <p>2 MR. HANUSIK: There is another listing on</p> <p>3 the next page.</p> <p>4 Q. There is a JEK listed?</p> <p>5 A. I believe that was James Kellet, K E L L E</p> <p>6 T, who was another partner in the New York office at</p> <p>7 the time, who has since retired.</p> <p>8 Q. What was Ms. Kotwani's representation with</p> <p>9 respect to this?</p> <p>10 A. She was the associate on the case.</p> <p>11 Q. Going back to page 5, Bates Number CMAR</p> <p>12 65, the July 3, 2013 entry. You billed .7 hours for</p> <p>13 what is described as "Conference call with Mr.</p> <p>14 Rashid, with his spouse and sister regarding</p> <p>15 matter."</p> <p>16 His sister, would that have been Erem</p> <p>17 Rashid, E R E M?</p> <p>18 A. Despite having spoken to her several times,</p> <p>19 I don't remember her name, so I believe so. It</p> <p>20 sounds right.</p> <p>21 Q. Was she a client of the firm?</p> <p>22 A. No.</p> <p>23 Q. What did you discuss with her in that</p> <p>24 conversation?</p> <p>25 A. In this particular conversation?</p>	<p>1 A. Well, I don't recall any specific</p> <p>2 conversations, but I can say generally we spoke</p> <p>3 about sort of updates directly from me, where we</p> <p>4 were in the process of the representation and all</p> <p>5 these requests. She was very concerned about him.</p> <p>6 Q. Please turn to Exhibit 2 in your binder.</p> <p>7 MR. THOMPSON: For the record, Exhibit 2 is</p> <p>8 a document that's Bates numbered Apollo 43 -- I am</p> <p>9 leaving out the 0's -- 43628 through 30. While I am</p> <p>10 at it, I think I neglected to identify the Bates</p> <p>11 Numbers of Exhibit 1A for the record, so let me do</p> <p>12 that, or Exhibit 1A, rather. The Bates Numbers are</p> <p>13 CMAR SEC 1 through 35.</p> <p>14 Back to Exhibit 2, this appears to be an</p> <p>15 e-mail string that ends with the e-mail from Mr.</p> <p>16 Zelenko, dated July 8th, 2:02 p.m., to Mr. Finzi; do</p> <p>17 you see that.</p> <p>18 A. Yes.</p> <p>19 Q. The subject is "Contact information,"</p> <p>20 correct?</p> <p>21 A. That's correct, that's what it says, yes.</p> <p>22 Q. Let's look on the second page, page 4369,</p> <p>23 it starts on the prior page, but it's from Mr.</p> <p>24 Zelenko. It's a July 3, 2013, 5:40 p.m., e-mail</p> <p>25 from Mr. Finzi; do you see that?</p>
<p>25</p> <p>1 Q. Yes.</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you know why you were having a</p> <p>4 conversation with Mr. Rashid, his wife and his</p> <p>5 sister?</p> <p>6 A. I don't remember what we talked about.</p> <p>7 Q. How many times do you believe you spoke</p> <p>8 with Erem Rashid or Rashid's sister?</p> <p>9 A. Sure, sister, yes.</p> <p>10 Over the course of those months, I am</p> <p>11 guessing, I am going to say 3 or 4 times maybe. I</p> <p>12 am not certain. Only telephone conversations I</p> <p>13 don't recall ever meeting.</p> <p>14 Q. Was it your custom to take notes during</p> <p>15 phone conversations with witnesses or other persons?</p> <p>16 A. It depends.</p> <p>17 Q. Do you believe that you took notes with</p> <p>18 respect to your phone conversations with Rashid's</p> <p>19 sister?</p> <p>20 A. I don't believe I did.</p> <p>21 Q. Is there a reason why you did not?</p> <p>22 A. The nature of the conversations, the</p> <p>23 locations of the conversations would be the reasons.</p> <p>24 Q. What do you mean the nature of the</p> <p>25 conversations?</p>	<p>27</p> <p>1 A. Yes.</p> <p>2 Q. It states: "Roberto, are you available at</p> <p>3 3:30? My partner Glen McGorty may also join the</p> <p>4 call as well, would you mind sending a dial-in?"</p> <p>5 Do you recall whether you, in fact,</p> <p>6 participated in a phone call with Mr. Finzi on or</p> <p>7 about July 3, 2013?</p> <p>8 A. I do not.</p> <p>9 Q. And if you had participated in a call,</p> <p>10 would you have any record of the call?</p> <p>11 MR. KEHOE: Objection, speculation.</p> <p>12 Q. You can answer.</p> <p>13 A. I might have hypothetically, to answer your</p> <p>14 question. I might have a record, but I have</p> <p>15 reviewed and provided to counsel any records I had,</p> <p>16 which were minimal, of everything related to this</p> <p>17 case. So the answer to your question is yes, but</p> <p>18 the real answer is I don't have any record of that</p> <p>19 call.</p> <p>20 Q. So to the best of your recollection, you</p> <p>21 don't think you participated in this particular</p> <p>22 call?</p> <p>23 MR. KEHOE: Objection to form. You can</p> <p>24 answer.</p> <p>25 A. I thought the question was about having</p>

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1 notes of the call.
 2 **Q.** That was the second question.
 3 **A.** The first question?
 4 **Q.** Let me ask you a new question: Do you
 5 think you participated in a July 3, 2013 call?
 6 **A.** I don't know. I don't remember.
 7 **Q.** But you have no recollection of the call?
 8 **A.** I don't have any recollection of a call, of
 9 that specific call.
 10 **Q.** So you're a blank slate with respect to
 11 that call?
 12 MR. KEHOE: Objection to the form, you can
 13 answer.
 14 **A.** I don't remember if I was on that
 15 particular call, so yes.
 16 **Q.** Are you aware of any document that might
 17 refresh your recollection if you did participate in
 18 that call?
 19 **A.** No.
 20 **Q.** Would you have received a report -- report
 21 is probably too formal, but would you have discussed
 22 with Mr. Zelenko the call if did you not participate
 23 in it?
 24 **A.** Yes.
 25 **Q.** Do you have any recollection of such a

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1 couldn't answer that question. If it does not, he
 2 can answer the question. It's as simple as that.
 3 MR. THOMPSON: Again, we disagree. The
 4 Judge's order specifically permits inquiry into
 5 discussions that would go into the existence or non-
 6 existence of the common-interest privilege, if you
 7 are not going to permit examination of any
 8 communication --
 9 MR. KEHOE: Oh, no --
 10 MR. THOMPSON: Do not interrupt me, please.
 11 If you are not going to permit examination
 12 of any discussions with Paul Weiss, I do believe that
 13 frustrates the order.
 14 MR. KEHOE: Well, you are mistaken. It
 15 does not frustrate the order and I disagree with
 16 you. Let me be very clear: In July of 2013 the
 17 position of Mr. Rashid was that there was a
 18 common-interest privilege, so communications between
 19 Mr. McGorty, Mr. Zelenko and Paul Weiss, as it
 20 pertains to the Rashid case, to the extent they
 21 involve discussions about that case, are protected
 22 by the common-interest privilege.
 23 Now, whether or not you want to ask other
 24 questions that don't impact that or don't involve
 25 the discussions about that representation, that's

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1 discussion?
 2 MR. KEHOE: If it involves the discussion
 3 with Paul Weiss during the operative timeframe, it's
 4 covered by the common-interest privilege and I
 5 instruct the witness not to answer.
 6 MR. THOMPSON: For the record, I do
 7 disagree with the instructions. As I understand the
 8 Judge's order, we are permitted to ask questions
 9 about the existence of a common-interest privilege,
 10 in fact that would go to the existence of such a
 11 privilege. To the extent you are preventing any
 12 inquiry about discussions with Paul Weiss, I think
 13 that frustrates the order and is not consistent with
 14 it, so I will state my disagreement with your
 15 objection.
 16 MR. KEHOE: My response is real easy. What
 17 you are asking about is a conversation between
 18 somebody at Crowell & Moring and somebody at Paul
 19 Weiss about representations of Mr. Ali or the
 20 subject matter, and it's quite simple then. Whether
 21 or not Mr. McGorty was involved, you asked him a
 22 question about: Did you discuss this with Mr.
 23 Zelenko? That was your question. To the extent
 24 that that impacted the common-interest privilege
 25 that existed in July of 2013, I told the witness he

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1 fine. We have no objection to that. We have not
 2 objected to every question in this regard. So why
 3 don't we take it one by one.
 4 MR. THOMPSON: I think we understand one
 5 another and disagree.
 6 MR. KEHOE: This, of course, is the problem
 7 when you get into deposing someone's prior counsel.
 8 You get into the attorney-client privileges so it's
 9 not surprising in this regard, is it?
 10 MR. THOMPSON: We have had a briefing on
 11 this, I don't think you need to make extended
 12 speeches about it.
 13 MR. KEHOE: I think you started off -- just
 14 move on to the next question. Just move on.
 15 **Q.** Let me ask you to turn to Exhibit 3 in your
 16 binder.
 17 MR. THOMPSON: Exhibit 3 for the record, is
 18 a document Bates numbered AR37 to 38. It appears to
 19 be an e-mail string that ends with a July 3, 2013,
 20 10:21 a.m. e-mail from Lisa Bernstein to Ali Rashid
 21 at Gmail.com.
 22 **Q.** Let me ask you: Do you have any
 23 recollection of seeing this document previously?
 24 **A.** No.
 25 **Q.** Let me first refer you to Mr. Rashid's

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1 e-mail of July 1, 2013, where he states: "Thanks
2 for your help through this process. It would be
3 helpful if I could get the following for my
4 lawyers." Then he lists various documents,
5 including employment documents, employment
6 agreement, passport, employee manual code of ethics,
7 expense policy, and personal e-mails.

8 Then, if you go back up to Ms. Bernstein's
9 e-mail of July 3rd, in her first sentence she
10 states: "Ali, the original request has been
11 approved?" Do you see that?

12 **A.** Yes.

13 **Q.** After you were engaged as one of Mr.
14 Rashid's lawyers, did you have access to the type of
15 documents listed in this e-mail of July 1 of 2013?

16 **A.** I don't remember seeing them. It does not
17 mean I didn't have any access to them if we
18 collected some or all of them.

19 **Q.** Do you believe you had access?

20 MR. KEHOE: Objection to the form.

21 You can answer.

22 **A.** I just don't recall this. I am sorry.

23 **Q.** Let's go back to Exhibit 2. You see on the
24 first page there is what appears to be a reference
25 to traveling to the meeting on July 8th, do you see

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1 take a look at that, on page Bates Number CMAR SEC
2 6?

3 **A.** Yes.

4 **Q.** There is a reference in the middle of the
5 page to a July 8, 2013 entry for a GM meeting at
6 Paul Weiss with Mr. Finzi, Mr. Ricciardi, myself and
7 Mr. Zelenko regarding status of internal
8 investigation, follow-up of Ms. Kotwani; do you see
9 that?

10 **A.** Yes.

11 **Q.** Based on that, do you believe that you
12 actually participated in a meeting with Paul Weiss
13 on July 8, 2013?

14 **A.** Based on that, it seems I did.

15 **Q.** So that particular time entry is a combined
16 entry. It's 1.5, but it also includes follow-up
17 discussions with Ms. Kotwani. Do you have a
18 recollection of approximately how long the actual
19 meeting with Paul Weiss lasted?

20 **A.** I don't.

21 **Q.** What do you recall about the discussion at
22 that meeting?

23 MR. KEHOE: To the extent that this
24 involves the common-interest privilege, I instruct
25 the witness not to answer.

35

1 that?

2 MR. KEHOE: I don't know which one you are
3 looking at.

4 MR. THOMPSON: This is the first page,
5 starting from the top, Mr. Zelenko's e-mail to Mr.
6 Finzi states: "We will be there in 5."

7 Below that, Mr. Finzi's e-mail says: "Yes,
8 it stills works."

9 Below that, Mr. Zelenko's e-mail says:
10 "Does 2:00 p.m. Monday still work for you guys?"

11 MR. KEHOE: Gotcha.

12 **Q.** Do you see that, Mr. McGorty?

13 **A.** I do.

14 **Q.** Did you participate in a meeting with Paul
15 Weiss on July 8, 2013, with respect to Mr. Rashid?

16 **A.** I remember going to Paul Weiss for a
17 meeting during that time period about Mr. Rashid's
18 case. I don't remember if that was the specific
19 meeting I remember in my head.

20 **Q.** Do you have a recollection of the first
21 meeting that you went to on that date?

22 **A.** I don't understand.

23 **Q.** That's a poor question let me withdraw
24 that.

25 I am going to refer you back to Exhibit 1A,

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1 **A.** I don't remember that specific meeting. I
2 don't know if there were others. I remember a
3 meeting at Paul Weiss during that time period. That
4 very well may have been the meeting where we
5 initially met with counsel at Paul Weiss to discuss
6 the circumstances resolving our representations.

7 **Q.** You do recall an initial meeting with Paul
8 Weiss?

9 **A.** I recall a meeting with Paul Weiss. I
10 don't know if the one that I recall -- if there was
11 more than one, I don't know. The one that I recall
12 was the first one, but I am not certain how many
13 there were. This would be a better guide for that.

14 **Q.** So would it be fair to say that you only
15 remember one meeting at Paul Weiss, then?

16 **A.** I remember one or two meetings vaguely. I
17 am not certain on the number. I remember at least
18 one, but I don't think there were multiple ones.
19 There weren't many, maybe 2 or 3 at the most.

20 **Q.** Let's focus on the first meeting that you
21 recall with Paul Weiss. Do you recall there being
22 any discussion of Rashid and Paul Weiss -- Rashid
23 and Apollo, rather, having a common interest?

24 MR. KEHOE: At this point, if you are
25 talking about this meeting -- and I will let the

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1 witness answer -- to the extent we are talking about
2 issues involving the common-interest privilege, I
3 instruct the witness not to answer or to answer
4 accordingly.

5 I am not talking about all answers
6 involving this meeting.

7 **A.** To answer your question, because it was
8 specifically related to an initial meeting, which
9 presumably, based on the date, this one would have
10 been, I don't have a specific recollection of what
11 was discussed at this meeting versus any other
12 meetings I would have had.

13 MR. THOMPSON: All right. I am just going
14 to read into the record a portion of the Judge's
15 order which was issued last Thursday, October 25.
16 It states --

17 MR. KEHOE: For the record, I'm aware of
18 the order.

19 MR. THOMPSON: That's fine. I am going to
20 read it into the record:

21 "Rashid concedes that there was no common
22 interest with Apollo through July 1, 2013, that none
23 existed as of August 1, 2013. It is the interim
24 period where he claims there was a common interest.
25 If Rashid or McGorty choose to assert a privilege or

1 MR. KEHOE: Do you mean attorney-client
2 communication?

3 **A.** I'm sorry. Attorney-client communications
4 between me and Mr. Rashid at the time. I just can't
5 distinguish in my mind.

6 **Q.** Do you recall any discussion with Paul
7 Weiss concerning what would be the ground rules, so
8 to speak, for Mr. Rashid's cooperation in the
9 expense review that was being conducted?

10 **A.** What do you mean by ground rules?

11 **Q.** Ground rules in terms of whether there
12 would be any confidentiality owed by one party to
13 another, for example?

14 **A.** I recall there was a confidentiality
15 agreement, I believe, before Paul Weiss provided us
16 with the documents needed to undertake the task that
17 we were going to take, which I am sure we will talk
18 about at some point. If you are asking me whether
19 or not I believe there was a common-interest
20 understanding about the nature of our communications
21 between Paul Weiss on behalf of Mr. Rashid and
22 Crowell & Moring, I believe we did have one
23 certainly in the beginning until whatever the date
24 was.

25 **Q.** What is the basis for your belief that one

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1 protection for any interim period, then plaintiffs
2 are entitled to examine Mr. McGorty on
3 communications with Apollo or its counsel that go to
4 the question of whether a common legal interest
5 existed at the time of the communication for which a
6 privilege or protection was asserted.

7 "If, following the deposition session,
8 plaintiff chooses to challenge the assertion of the
9 privilege or protection, Rashid will have the burden
10 of establishing its existence. If the Court upholds
11 the assertion, the deposition will be completed. If
12 the Court does not uphold the assertion, then the
13 witness will need to be produced for further
14 examination."

15 **Q.** Mr. McGorty, do you recall any discussion
16 with Paul Weiss' attorneys at any time with respect
17 to an Upjohn warning to be given?

18 **A.** My recollection is that there were
19 discussions -- well, actually, I can't actually
20 answer that question because I am not sure if I am
21 relying on attorney-client privilege rather than
22 what I have learned from Paul Weiss or other
23 sources.

24 **Q.** When you say attorney-client privilege are
25 you referring to the --

1 did exist?

2 **A.** I can't point to a specific conversation
3 that I had personally with Paul Weiss, but I can
4 tell you that it is my recollection that that was
5 the understanding between Paul Weiss and Crowell &
6 Moring in connection with why we were being brought
7 into this case to assist with Mr. Rashid's review of
8 these expenses and representation generally.

9 **Q.** So I think you said that you don't recall a
10 specific discussion. I just want to be clear, do
11 you recall any discussion with Paul Weiss about
12 there being a common interest as between Rashid and
13 Apollo?

14 **A.** I just can't point to a specific
15 conversation. I am just offering you what my best
16 recollection is, which is that we had an
17 understanding at that time that we were
18 communicating with Paul Weiss. There was a common
19 interest and the common interest was based
20 ultimately in reviewing these expenses as best we
21 could, assisting Mr. Rashid in reviewing these
22 expenses to assist Apollo in their determination --
23 among other things, in their determination of the
24 nature of their claims or concerns against Mr.
25 Rashid, and from Mr. Rashid's perspective to resolve

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<p>1 any potential dispute with Apollo with respect to 2 the nature of these expenses. 3 Q. You said a couple of times you don't recall 4 any specific discussion with Paul Weiss, but you 5 nonetheless had an understanding. Is it possible 6 that your understanding was based not on a 7 conversation with Paul Weiss but a conversation with 8 Mr. Zelenko? 9 MR. KEHOE: Objection to form. 10 Speculation. 11 A. I don't think it would be based just on 12 that, candidly. 13 Q. Is it possible that your understanding was 14 just your own assumption? 15 MR. KEHOE: Objection to the form. Calls 16 for speculation. 17 A. I do not believe it was based on just 18 assumption either. 19 Q. What I am trying to get at is what was it 20 based on? If you do not recall a conversation with 21 Paul Weiss about a common interest, what was your 22 understanding based on? 23 A. Well, my understanding at the time -- I am 24 just saying I don't recall specific conversations 25 with Paul Weiss. I am not saying that at the time</p>	<p>1 which I believe I was at, they might. 2 Q. Whether you took notes or someone else took 3 notes -- let me ask this -- 4 A. Yes? 5 Q. Whatever meeting you recall with Paul 6 Weiss, do you recall anybody from Crowell taking 7 notes? 8 A. I don't recall. It would be the general 9 practice that someone would take notes. I don't 10 recall. 11 Q. Would that be the most junior person 12 present or it doesn't work that way? 13 A. It depends on the meeting. 14 Q. In the normal course, would there have been 15 a file memo prepared with respect to the July 8th 16 meeting? 17 A. In the normal course -- I just don't 18 remember the nature of that particular meeting, so I 19 can't speak to it. As to the general practice of 20 meetings of that nature, it's quite possible there 21 would have been a file memo created, but I have no 22 idea. 23 Q. So you don't know, but if one did exist it 24 might refresh your recollection? 25 A. If one did, it might refresh my</p>
<p style="text-align: center;">41</p> <p>1 that my belief that we had a common interest was not 2 based on conversations with Paul Weiss. I just 3 can't point to a specific conversation because I 4 don't remember the details, particularly of these 5 early conversations that we had with them. 6 My answer to your question is: I am not 7 saying that it was never discussed. I just don't 8 recall the details of the conversation. I do recall 9 my belief at the time that we did have a common- 10 interest understanding, which is the nature, I 11 believe, of the communications we had in the 12 beginning part of our representation. 13 Q. Would someone from Crowell have taken notes 14 during the July 8th meeting? 15 A. Someone might have. That might be a good 16 place to look. 17 Q. But you have not done that so far, I take 18 it? 19 A. Taken notes? 20 Q. You haven't looked at any notes? 21 A. I have not looked at these at all. 22 Q. If any notes exist, they will refresh your 23 recollection as to what was discussed at the 24 meeting, I take it? 25 A. If I was at that meeting, the 8th meeting</p>	<p style="text-align: center;">43</p> <p>1 recollection if I was present, yes. 2 Q. I am going to ask some questions, see if I 3 can jar your memory a little bit and if it doesn't, 4 sobeit. Do you recall any discussion with Paul 5 Weiss about the purpose of the expense review? 6 A. Generally, yes. 7 Q. What do you recall? 8 A. These are conversations at any point? 9 Q. Well, since you can't remember 10 specifically, I guess at any point. 11 A. Fair enough. I remember conversations with 12 Paul Weiss during the course of our representation 13 where we discussed the nature of this review project 14 and what we were doing, what we were assisting Mr. 15 Rashid to do and what the purpose of that project or 16 that review was. 17 Q. Can you be any more specific about the 18 discussion? 19 A. Sure. I was speaking generally. 20 Specifically, I believe that we represented to Paul 21 Weiss that we were going to and in the process of 22 assisting Mr. Rashid in reviewing the expense 23 reports provided to us by Paul Weiss. Looking at 24 other documents, I recall credit-card statements, 25 maybe travel records, Mr. Rashid's calendar, where</p>

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<p>1 we were attempting to determine which expenses on 2 the expense report were provided by Paul Weiss were 3 business expenses and to where they were business 4 expenses, how they could be allocated within 5 Apollo's system, and where there was documentation 6 to support that particular expenses were business 7 expenses.</p> <p>8 With respect to all expenses that we 9 couldn't determine to be business expenses, we put 10 them aside and as was represented to Paul Weiss, it 11 was our goal in assisting Mr. Rashid with his 12 preference and desire to resolve his issues with 13 Apollo, to reimburse Apollo for everything that 14 couldn't be documented as a business expense, even 15 if was not truly a personal expense, and all of that 16 was represented to Paul Weiss, to answer your 17 question.</p> <p>18 Q. Was there any discussion with Paul Weiss 19 that you recall about the criteria that would be 20 applied to determining whether a particular expense 21 was, in fact, a business expense?</p> <p>22 MR. KEHOE: You mean other than as he just 23 testified?</p> <p>24 Q. If you don't have anything to add, you can 25 say that.</p>	<p>1 past expenses, based on the documents that we had in 2 front of us and available to us. I don't know if at 3 the time Apollo's expense policy would permit them 4 to reimburse an employee like Mr. Rashid with less 5 than that standard. I think it would, but that's 6 speculative, just to be clear.</p> <p>7 What I am saying is, our standard was the 8 only thing that we put in the business expense 9 bucket were things that we had in front of us that 10 we could, as best I can recall, as it was 11 communicated to Paul Weiss, was a documented 12 business expense.</p> <p>13 Q. Do you recall any discussion with Paul 14 Weiss about the criteria for reimbursing business 15 expenses set forth in Apollo's time and expense 16 policy?</p> <p>17 A. I don't recall that.</p> <p>18 Q. You don't recall any discussion like that 19 at all?</p> <p>20 A. With Paul Weiss?</p> <p>21 Q. With Paul Weiss.</p> <p>22 A. I don't recall any discussion about 23 Apollo's preexisting policies. That does not mean 24 we didn't have any, I don't recall.</p> <p>25 Q. You may have mentioned this before, but I</p>
<p>45</p> <p>1 MR. KEHOE: He did testify to that. I want 2 to --</p> <p>3 A. To answer your question, something I did 4 say was we were looking for documentation that could 5 affirmatively show that a particular business 6 expense was a business expense and where it could be 7 allocated to within the Apollo system, if possible, 8 based on a review of Mr. Rashid's calendar, the 9 credit-card records, and I don't remember the nature 10 of any other records that we may have had access to 11 at the time; but the criteria was basically what 12 could we document as clearly a proper business 13 expense. If it could not be documented, whether it 14 was a proper business expense or not, we put it in 15 the other bucket.</p> <p>16 Q. Do you have an understanding whether it was 17 the same standard that applied in Apollo's normal 18 course of business?</p> <p>19 A. I think it would be a different standard.</p> <p>20 Q. What do you think would have been the 21 standard?</p> <p>22 A. I don't know what the standard was. The 23 reason I framed it that way is because our standard 24 was based on putting forward anything that could be 25 affirmatively documented at this point in time of</p>	<p>47</p> <p>1 just want to be clear, do you recall consulting 2 Apollo's time and expense policy in the course of 3 your representation of Mr. Rashid during the expense 4 review?</p> <p>5 A. I don't recall. It doesn't mean that we 6 didn't. I just have difficulty distinguishing my 7 recollection of the policy versus information that 8 would have been attorney-client communications.</p> <p>9 Q. Do you recall any discussion with Paul 10 Weiss as to why Rashid should agree to cooperate 11 with an expense review? What was in it for him?</p> <p>12 A. From Paul Weiss' perspective.</p> <p>13 Q. No, from Rashid's perspective. Was there a 14 discussion about why he was doing this?</p> <p>15 A. Distinguished from conversations I had 16 exclusively with Mr. Rashid, what I remember 17 repeatedly speaking to Paul Weiss about was Mr. 18 Rashid wants to resolve this, he wants to keep his 19 job. He is going to be as cooperative as he can be, 20 and even if it means reimbursing expenses that 21 aren't ones that he necessarily would have had to 22 have reimbursed, he wanted to pay to reimburse 23 anything that could not be documented, which is what 24 our project was. Of that I am fairly certain, I 25 said it to Paul Weiss on multiple occasions, but I</p>

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<p>1 don't remember again whether there were meetings or 2 calls, but that was what we communicated to them. 3 Q. Rashid was trying to keep his job, 4 basically? 5 MR. KEHOE: Objection to form. 6 You can answer. 7 A. I remember, again, what I communicated to 8 Paul Weiss was that Mr. Rashid wanted to keep his 9 job and wanted to cooperate in any way that he could 10 and resolve these concerns that Apollo had with him 11 and, hopefully, one that would allow him to keep his 12 job. 13 Q. Was there any discussion that you recall 14 with Paul Weiss of whether Apollo's business might 15 be impacted if Rashid's conduct were to be publicly 16 revealed? 17 A. I don't remember that. 18 Q. Was there any discussion of Rashid's 19 cooperation expense review being a way of keeping 20 his conduct from being publicly revealed? 21 A. I don't remember specific conversations. 22 That's the answer, I guess. 23 Q. Was there any discussion with Paul Weiss of 24 the SEC being in the process of conducting an 25 examination of Apollo at the time?</p>	<p>1 A. I can't distinguish the source of 2 information about that from what I learned from my 3 attorney-client communication with Mr. Rashid, as 4 opposed to another source. 5 Q. I believe you testified that you are not 6 certain as to whether you had an understanding as to 7 whether the SEC, during the examination, knew about 8 any expense issues; but do you recall any discussion 9 with Paul Weiss about Rashid's expenses potentially 10 becoming an issue in the SEC examination? 11 A. I am sure we discussed that. I don't have 12 a specific recollection of that, but I believe we 13 would have discussed that. 14 Q. So you have no actual recollection of it 15 though? 16 A. I don't. 17 Q. Do you recall any discussion of Apollo 18 potentially reporting Rashid's conduct to the SEC? 19 A. I cannot source that concern to any 20 conversations with Paul Weiss. 21 MR. KEHOE: Well, if it's involving 22 conversation with a client, don't answer. 23 THE WITNESS: That's why I am struggling. 24 A. Can you ask the question again. 25 Q. Do you recall any discussion with Paul</p>
<p>49</p> <p>1 A. Yes, I remember that. 2 Q. What do you recall about that? 3 A. Not much more than I remember that the SEC 4 was conducting an investigation at the time. 5 MR. KEHOE: Objection, it was an 6 examination. 7 A. I am sorry, examination at the time. I 8 candidly do not recall whether the SEC was aware of 9 the concern that Apollo had raised with Mr. Rashid 10 at the time, specifically as to Mr. Rashid or 11 generally. I don't recall that, but I remember 12 being well aware that there was an examination going 13 on and having that conversation with Paul Weiss. 14 Q. Do you have any understanding as to what 15 part of the SEC was conducting the examination? 16 A. Obviously not the enforcement part, but I 17 don't know where the examination was being run out 18 of. 19 Q. So you don't know whether it was the Office 20 of Compliance, Inspections and Examinations? 21 A. I don't recall if I knew at the time. 22 Q. Do you recall being aware of a prior review 23 of Rashid's expenses before Crowell was hired in 24 which Rashid agreed to reclassify certain of his 25 expenses as personal rather than business?</p>	<p>51</p> <p>1 Weiss about Apollo potentially reporting Rashid's 2 conduct to the SEC? 3 A. I can't recall a specific conversation with 4 Paul Weiss about that concern. 5 Q. Was there any discussion with Paul Weiss of 6 Rashid and Apollo jointly making a decision as to 7 whether to make some type of disclosure to the SEC 8 with respect to his conduct? 9 A. There may have been. I am trying to see if 10 I recall more specifically. I don't. 11 Q. Do you believe that there is any writing, 12 contemporaneous writing, that would memorialize such 13 an understanding? 14 A. Other than e-mail communications that might 15 reflect that, I can't imagine what else it could 16 have been, but I am not aware whether there was any 17 e-mail communication involving me or not involving 18 me on that issue. 19 Q. Even if it was an internal Crowell memo, 20 this would be a fairly significant understanding, 21 right, that you were jointly going to decide whether 22 to report to the SEC? That is something that would 23 have been memorialized in some fashion; right? 24 MR. KEHOE: Objection to form, multiple 25 questions.</p>

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1 **A.** Let me answer it and tell me if I am not
2 answering the question.
3 If any client and his or her employer had
4 agreed to jointly announce something or disclose
5 something to the SEC, that would be an event of
6 sorts and a decision of sorts, and if that had
7 happened, my guess is that there would be some
8 recollection of that as well as writings to reflect
9 that in the ordinary course.
10 I don't believe that happened here, that's
11 not my recollection, but I can't say there would or
12 would not be any writings or conversations about
13 that topic.
14 **Q.** Do you recall any discussion with Paul
15 Weiss of the expense for you being a way to avoid
16 having to make a disclosure to the SEC with respect
17 to Rashid's conduct?
18 **A.** I am certain I discussed with Paul Weiss --
19 wrapped up, as I said earlier, in our goals of the
20 project, was the best possible resolution of
21 Apollo's concerns with Mr. Rashid, hopefully in the
22 interest of him keeping his job. To the extent that
23 we discussed -- I mean, I have a vague recollection
24 of discussions with Paul Weiss, where we had hoped
25 that a resolution could be reached in the best

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1 advised?
2 **A.** I recall Paul Weiss had offered some
3 information on the mechanics of how it worked
4 internally at Apollo; so, yes, I think I don't
5 remember anything specifically as to what we were
6 told, but I am fairly certain that at some moment in
7 our conversations with Paul Weiss they discussed
8 that.
9 **Q.** Do you have an understanding that Rashid's
10 conduct could potentially constitute a securities'
11 law violation if expenses had not been passed on to
12 private-equity funds?
13 MR. KEHOE: I am going to object to the
14 extent that the conversation leads to conversations
15 with Mr. Rashid, covered by the attorney-client
16 privilege.
17 MR. THOMPSON: I am asking about
18 conversations with Paul Weiss.
19 **A.** I don't remember that.
20 **Q.** If expenses had not been passed on to
21 private-equity funds, it would not be a regulatory
22 matter, it would be an employment issue; correct?
23 MR. KEHOE: Objection to form.
24 **A.** I don't remember having conversations with
25 Paul Weiss about that, I just don't.

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1 possible way for Mr. Rashid, which I think would
2 have included not disclosing Mr. Rashid's alleged
3 conduct to the SEC, so I have a vague recollection
4 of that conversation. That's the best I could do.
5 **Q.** Was there any discussion of whether Apollo
6 had regulatory exposure on account of Rashid's
7 conduct?
8 **A.** I don't recall that.
9 **Q.** Was there any possible discussion about
10 having possible criminal exposure?
11 **A.** With Paul Weiss?
12 **Q.** Yes.
13 **A.** I don't recall that.
14 **Q.** Was there any discussion with Paul Weiss as
15 to whether Rashid's conduct would raise regulatory
16 issues for him personally?
17 **A.** I can't distinguish conversations I had
18 with Paul Weiss. The answer is I don't remember. I
19 can't distinguish between those conversations that
20 may have been with Paul Weiss or attorney-client
21 communications.
22 **Q.** Do you recall any discussions with Paul
23 Weiss as to whether at least some of the expense
24 that Rashid had billed as business expenses were
25 passed on to private-equity funds that Apollo

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1 **Q.** Was there any, do you recall any discussion
2 with Paul Weiss that the private-equity funds
3 themselves may have potential claims themselves
4 against Rashid?
5 **A.** I don't recall.
6 **Q.** Was there any discussion that you recall
7 with Paul Weiss or Apollo, at the end of the expense
8 review, repaying private-equity funds for expenses
9 that had been improperly billed to them?
10 **A.** I don't remember having that conversation
11 with them.
12 **Q.** Do you recall any discussion with Paul
13 Weiss at any time as to whether Rashid's conduct
14 would be material under the federal securities laws?
15 **A.** I don't know.
16 MR. HANUSIK: Related to what though?
17 MR. THOMPSON: Material to any securities'
18 law violation.
19 **A.** I don't recall having that conversation
20 with them.
21 MR. HANUSIK: Can I just ask, by whom? The
22 materiality goes to an event not to a law. It's
23 material to somebody's results or Apollo or private
24 equity.
25 MR. THOMPSON: Material private-equity

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1 violation. Materiality is an element of --
 2 MR. HANUSIK: It's a violation by who?
 3 MR. THOMPSON: I am going to move on
 4 because I think it's been addressed.
 5 Q. I am going to ask you to turn to Exhibit 5
 6 in your binder.
 7 MR. THOMPSON: For the record, the exhibit
 8 is a document that appears to be an e-mail from
 9 Susan Maisel, dated July 17, 2013, at 10:43 p.m., to
 10 Sipoura Barzideh, S I P O U R A, B A R Z I D E H,
 11 and attached case and Bates Numbers are Apollo
 12 109047 through 58.
 13 Q. Mr. McGorty, I am not going to quiz you
 14 necessarily about the SAAD case, but I do want to
 15 ask you a couple of questions.
 16 A. Did you want me to read the case?
 17 Q. I do not want you to read the case. I want
 18 to direct you to -- let's look on the first page of
 19 the exhibit, Ms. Maisel's e-mail of July 8, 4:54
 20 p.m. to Mr. Zelenko and you. It states: "Dan and
 21 Glen following up on this afternoons's meeting.
 22 Attached is the recent DC Circuit case Walter
 23 mentioned, and then the SAAD case is attached.
 24 I am not going to ask you questions about
 25 the case, but do you want to read the background

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1 A. I want to see who the Judge's were, I am
 2 curious.
 3 Q. At the July 8th meeting with Paul Weiss,
 4 was there any discussion that you recall of Apollo
 5 potentially asserting a legal claim against Rashid?
 6 MR. KEHOE: Again, I have to caution you,
 7 this is during the operative timeframe. If it
 8 impacts the common-interest privilege as you
 9 understand it, Mr. McGorty, I instruct you not to
 10 answer.
 11 A. There again, the answers that I have given
 12 so far about communications with Paul Weiss, are
 13 not, to the best of my recollection, during the
 14 timeframe of the common-interest privilege as we
 15 have defined it. I don't have a recollection of
 16 what was said at that particular meeting anyway, so
 17 the answer is I don't remember. I don't remember.
 18 Q. With respect to the meetings and
 19 discussions with Paul Weiss that you do recall, do
 20 you recall any discussion of the possibility of
 21 Apollo asserting a legal claim against Rashid on
 22 account of his expense reporting?
 23 MR. KEHOE: Again, if I could just -- and,
 24 Mr. McGorty, you touched on this -- your
 25 conversations that you related to with Paul Weiss

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1 summary about the case and see if that refreshes
 2 your recollection? Let me know when you are done
 3 and I will ask you a couple of questions.
 4 (Witness reviewing document.)
 5 A. Okay.
 6 MR. KEHOE: I looked this over and this is
 7 obviously in the operative timeframe of the
 8 common-interest privilege, so to the extent that the
 9 question impacts the privilege during that operative
 10 time frame of July of 2013, I am going to instruct
 11 him not to answer.
 12 A. Okay.
 13 Q. Do you remember any discussion -- I mean
 14 there is a reference in Ms. Maisel's memo to the
 15 case that Walter mentioned. Would that be Walter
 16 Ricciardi?
 17 A. That is the only Walter I know there, so I
 18 assume.
 19 Q. Do you have any recollection of Mr.
 20 Ricciardi said about the case?
 21 A. I don't. None at all.
 22 Q. You can set that aside. I'm not going to
 23 ask you anymore questions about it.
 24 At the July 8th meeting with Paul Weiss,
 25 was there any discussion --

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1 were post-August 1st, 2013 and not during the July
 2 of 2013 timeframe. So to the extent that the answer
 3 to counsel's question impacts conversations after
 4 August 1, 2013, obviously you can answer, but prior
 5 to that, no.
 6 A. That's how I have been trying to answer. I
 7 don't have a recollection of having that
 8 conversation we will just say post-August 1st, if
 9 that's the general timeframe that we are going with.
 10 Not to say that we never had that conversation, but
 11 I do not recall having that with Paul Weiss.
 12 Q. For the record, I do want to ask about the
 13 period between Crowell's initial engagement and
 14 August 1st, the same question. You may get an
 15 instruction on this, but do you recall any
 16 discussion with Paul Weiss in that time period, of
 17 the possibility that Apollo might assert a legal
 18 claim against Rashid?
 19 MR. KEHOE: The same instructions.
 20 A. I don't think I can answer the question.
 21 Q. At any time, do you recall any discussion
 22 with Paul Weiss about a settlement privilege
 23 potentially applying to information that Mr. Rashid
 24 or you, on his behalf, might apply to Paul Weiss?
 25 A. You are asking whether we discussed the

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<p>1 idea of resolving or settling the claims or whether 2 we discussed the privilege that would be attached to 3 that?</p> <p>4 Q. The latter, the privilege.</p> <p>5 A. I don't recall any conversations such as 6 that.</p> <p>7 Q. At any time?</p> <p>8 A. Right. I don't recall with Paul Weiss.</p> <p>9 Q. Now, I am trying to frame the question 10 because you don't recall specific meetings, which is 11 understandable, but do you recall at what point in 12 time, in your mind, there was a common-interest 13 understanding as between Paul Weiss, representing 14 Apollo on the one hand, and Crowell representing 15 Rashid, on the other hand?</p> <p>16 A. I am just trying to understand the 17 question. Will you repeat it again, the last part?</p> <p>18 Q. Let me try to rephrase it.</p> <p>19 A. I am sorry.</p> <p>20 Q. Did you think that there was a 21 common-interest understanding in the very first 22 meeting or the very first phone call between Crowell 23 and Paul Weiss with respect to the expense review or 24 do you think it developed at some later point in 25 time, perhaps as a matter of course of dealing? I</p>	<p>1 of putting some type of header or footer on 2 documents to the effect that they were joint defense 3 or common- interest material; that's what you are 4 relying on?</p> <p>5 A. I would not describe it as a firm practice. 6 I think that is a practice that I think I have 7 employed when I have sent, not necessarily without 8 fail, but when I have sent documents or 9 communications to someone or an entity where I 10 believe we share a common interest. I would have 11 tried to note it as such. It doesn't mean if I 12 didn't that I didn't believe it was. Unfortunately, 13 I can't say it was a foolproof system, but that 14 generally is what the purpose of that header is.</p> <p>15 Q. In this case you did put headers on.</p> <p>16 A. If you say that, then that confirms that I 17 believed in that moment, if I did it, then I 18 believed that that communication was subject to a 19 common interest.</p> <p>20 Q. Was there any other basis that you had to 21 believe that there was a common-interest 22 understanding?</p> <p>23 A. Other than what?</p> <p>24 Q. Other than your putting some marker of 25 common interest or joint-defense privilege on</p>
<p>61</p> <p>1 am trying to understand what you thought?</p> <p>2 A. Yes. My recollection is from the beginning 3 of the representation, our entire function was 4 derived from a common interest that we had, I 5 believed that we had with Apollo, to undertake this 6 expense review in their interest and, of course, 7 from our perspective, in Mr. Rashid's interest.</p> <p>8 Q. You previously testified that you don't 9 recall discussions with Paul Weiss to that effect.</p> <p>10 Did you think that you had a meeting of the minds 11 with Paul Weiss' attorneys as to the existence of a 12 common-interest understanding?</p> <p>13 MR. KEHOE: I object if it calls for him to 14 opine as to what was going on in Paul Weiss' mind. 15 I object to the speculation, but you could answer.</p> <p>16 Q. I am asking about in your mind, what you 17 thought.</p> <p>18 A. I believed from the beginning that, again, 19 based on our representations as communications being 20 common interests, I believed that that was a mutual 21 understanding. That's the best I can say. I can't 22 point to anything more specific than that, but that 23 was my belief.</p> <p>24 Q. So, from, if I am understanding you 25 correctly, you are referring to Crowell's practice</p>	<p>63</p> <p>1 documents being transmitted to Paul Weiss?</p> <p>2 A. I would suggest that the header is not 3 evidence that there was a common interest, but it's 4 certainly evidence that we believed there was. I 5 think the evidence of there being a common interest 6 was the fact that in retrospect and at the time we 7 had a common interest which was --</p> <p>8 Q. Sounds a little circular.</p> <p>9 A. You are asking me what I am basing this on, 10 and at least in part I am basing it on the fact that 11 at the time we came on to do this representation, it 12 was my understanding that the nature of the project 13 was something that we both shared an interest in 14 resolving accurately, truthfully and to the best of 15 Mr. Rashid's ability. That's the way I could say, 16 look back and say that that confirms what I believe 17 was my understanding at the time.</p> <p>18 Other confirmation, as you suggest, the 19 headers, that I believe at the time we had a common 20 interest in these communications.</p> <p>21 Q. In your own words, what was the common 22 interest between Mr. Rashid and Apollo?</p> <p>23 A. Well, I believe, I think I believed that 24 the common interest was resolving concerns that 25 Apollo had reflected about Mr. Rashid's expense use</p>

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<p>1 at Apollo; to assist them in resolving their 2 concerns about Mr. Rashid; to resolve Mr. Rashid's 3 concerns about being employed at Apollo; and to the 4 extent that there was linkage to the SEC 5 examination, to assist Apollo in resolving that. 6 To the extent there was a connection to 7 that examination, I believe it was a variety of 8 issues one of which may have been the Apollo expense 9 policy, that was a common interest.</p> <p>10 Q. You said to the extent there was linkage to 11 the SEC investigation, but you previously testified 12 you didn't know if there was any linkage; correct?</p> <p>13 MR. KEHOE: Objection to form. He didn't 14 say that.</p> <p>15 A. I don't think that's what I said. I said I 16 don't recall if the SEC examiners were specifically 17 aware of Mr. Rashid and his expense issue. I do 18 believe that part of -- again, Paul Weiss would know 19 better, but I do believe that part of this 20 examination involved Apollo's addressing their 21 expense policy.</p> <p>22 Again, what I don't know is whether or not 23 the SEC brought it to Apollo's attention or Apollo 24 had to resolve this and bring information to the 25 SEC's attention about this issue, generally or</p>	<p>1 whether one, nor do I now, whether one side can have 2 -- the common interest can be derived from not a 3 lack of meeting of the minds but just the facts of 4 the circumstances or the representations.</p> <p>5 Q. So you don't recall thinking about whether 6 you needed Apollo's agreement or Paul Weiss' on 7 behalf of Apollo's agreement, that a common-interest 8 understanding existed; that's not something you 9 thought about?</p> <p>10 MR. KEHOE: Objection to the form.</p> <p>11 A. I don't remember thinking we had to address 12 that question at all. I thought we had -- it was a 13 mutual understanding.</p> <p>14 MR. HANUSIK: I think it's a good time for 15 a break.</p> <p>16 MR. THOMPSON: Sure, why don't we take ten 17 minutes.</p> <p>18 We are off the record. 19 (Whereupon, a recess was taken.)</p> <p>20 MR. THOMPSON: We are back on the record.</p> <p>21 BY MR. THOMPSON:</p> <p>22 Q. Mr. McGorty, you knew that Apollo had given 23 Rashid an Upjohn warning during his meeting with him 24 on July 1, 2013, did you not?</p> <p>25 MR. KEHOE: To the extent that that calls</p>
<p>65</p> <p>1 specifically. I never had a sense of the scope of 2 the examination. I never had a sense of the scope 3 of the expense part of this examination, if that was 4 part of it.</p> <p>5 Q. Did you think that there needed to be a 6 meeting of the minds with Paul Weiss in order for 7 there to be a common-interest understanding or did 8 you think you could impose one unilaterally by 9 marking documents the way you did?</p> <p>10 MR. KEHOE: Objection to the form. 11 You can answer.</p> <p>12 A. I don't know if I can answer that question.</p> <p>13 Q. Let's break it down: Do you think that 14 there needed to be a meeting of the minds with Paul 15 Weiss with respect to the existence of a 16 common-interest understanding?</p> <p>17 A. You are asking me whether or not you could 18 objectively have a common interest even if one party 19 doesn't realize that?</p> <p>20 Q. Well, that wasn't the question I asked, but 21 why don't we take that one?</p> <p>22 A. I don't know the answer to that question 23 actually. What I do know is that I believe at the 24 time that we had a mutual common interest that both 25 sides recognized. So I never reached the issue of</p>	<p>67</p> <p>1 upon a conversation with the client, I instruct you 2 not to answer.</p> <p>3 A. I can't distinguish any client 4 communications with anything else that would have 5 been the source of any information about that.</p> <p>6 Q. You don't recall discussing the Upjohn 7 waring with Paul Weiss?</p> <p>8 MR. KEHOE: Objection to form.</p> <p>9 Q. Or do you recall?</p> <p>10 MR. KEHOE: Hold on a second. If we are 11 talking about this issue, and this goes to 12 conversations on a common interest during July of 13 2013, I am instructing him not no answer.</p> <p>14 MR. THOMPSON: The instruction is noted and 15 I would just say that that's clearly what the Judge 16 said we could ask about. You can take it up with 17 the Judge.</p> <p>18 MR. KEHOE: Just explain to me why.</p> <p>19 MR. THOMPSON: I am not going to have 20 colloquy on this. We will deal with it later if 21 that's your instruction.</p> <p>22 Q. Can you answer the question?</p> <p>23 A. Can you ask it again? I am sorry.</p> <p>24 Q. Do you recall any discussion with Paul 25 Weiss about Paul Weiss having given Mr. Rashid an</p>

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<p>1 Upjohn warning?</p> <p>2 A. I can't recall whether or not I learned of</p> <p>3 that from Paul Weiss at any time.</p> <p>4 Q. Part of an Upjohn warning is that any</p> <p>5 privilege belongs to the company and could be waived</p> <p>6 at the company's sole discretion; correct?</p> <p>7 MR. KEHOE: Objection to form.</p> <p>8 A. I do know what an Upjohn warning is, and</p> <p>9 that's what it's supposed to do.</p> <p>10 Q. Did you think that the Upjohn warning was</p> <p>11 applicable to your communications with Apollo's</p> <p>12 representatives on Rashid's behalf?</p> <p>13 A. Absolutely not.</p> <p>14 Q. Why not?</p> <p>15 A. I never had a representation where</p> <p>16 communications with counsel for an entity carried</p> <p>17 over what I imagine would have been a previously</p> <p>18 administered Upjohn warning to an individual</p> <p>19 employee that we later represented at a time prior</p> <p>20 to our representation.</p> <p>21 Q. So, in your mind, did the common interest</p> <p>22 that you believe existed when Crowell started</p> <p>23 representing Rashid, did that extinguish the Upjohn</p> <p>24 warning that had been previously administered to Mr.</p> <p>25 Rashid?</p>	<p>1 discussion between Crowell and Paul Weiss concerning</p> <p>2 Crowell's practice of inserting the words "common-</p> <p>3 interest privileged document" or similar words into</p> <p>4 the subject line of e-mails?</p> <p>5 A. As I said earlier, I don't consider that a</p> <p>6 Crowell practice, and I don't recall at any point</p> <p>7 any discussion with anybody about the fact of us</p> <p>8 inserting that header or the significance of that.</p> <p>9 Q. Did you regard Paul Weiss' silence as</p> <p>10 acquiescence to your assertion of a common-interest</p> <p>11 privilege?</p> <p>12 A. Did you say did I rely on that?</p> <p>13 Q. Did you regard it?</p> <p>14 A. Did I regard it? I can't say that at the</p> <p>15 time I was paying attention to their response or</p> <p>16 lack thereof to the inclusion of the header to have</p> <p>17 some meeting that I understand we now are giving it</p> <p>18 because at the time I didn't think there was a</p> <p>19 dispute about our common interest.</p> <p>20 Q. So you didn't think about it one way or the</p> <p>21 other?</p> <p>22 MR. KEHOE: Objection to form.</p> <p>23 A. That's not what I said. I didn't have a</p> <p>24 view on their silence, because I didn't observe that</p> <p>25 as an issue, one way or another.</p>
<p>69</p> <p>1 A. To the extent that Mr. Rashid was given an</p> <p>2 Upjohn warning in a meeting with his employer prior</p> <p>3 to our representation, I don't see any connection.</p> <p>4 That, in my experience, that warning extinguished</p> <p>5 when he left that room and that meeting, but that's</p> <p>6 again, beyond my scope of knowledge in this case.</p> <p>7 Q. If I understand you correctly, you believe</p> <p>8 the Upjohn warning only pertained to whatever Mr.</p> <p>9 Rashid disclosed at the July 1, 2013 meeting?</p> <p>10 MR. HANUSIK: Objection to the extent</p> <p>11 you're stating facts not in evidence.</p> <p>12 A. Let me answer that question just generally</p> <p>13 and you tell me if that is sufficient.</p> <p>14 My understanding is that when an individual</p> <p>15 is given an Upjohn warning by his or her employer,</p> <p>16 it applies to the meeting at or the interview,</p> <p>17 whatever the case may be, when that Upjohn warning</p> <p>18 was given. For example, when I have given Upjohn</p> <p>19 warnings to individuals when I represented their</p> <p>20 employer, I have given Upjohn warnings at every</p> <p>21 meeting I had with that individual, not merely the</p> <p>22 first one, because it does not, in my experience or</p> <p>23 it should not apply indefinitely because it was</p> <p>24 administered once.</p> <p>25 Q. Prior to August 1st, 2013, was there any</p>	<p>71</p> <p>1 Q. Would you have continued to send materials</p> <p>2 to Paul Weiss if they had said: Hold on, we don't</p> <p>3 agree that there is a common-interest privilege?</p> <p>4 MR. HANUSIK: Objection, calls for</p> <p>5 speculation.</p> <p>6 A. I have no idea what I would have done.</p> <p>7 Q. Is there any contemporaneous memo or other</p> <p>8 writing that memorializes Crowell's understanding</p> <p>9 that a common-interest privilege existed in</p> <p>10 protected communications with Paul Weiss regarding</p> <p>11 Rashid's expenses.</p> <p>12 MR. HANUSIK: Just so I am clear on the</p> <p>13 question, the question is any memo or other writing?</p> <p>14 MR. THOMPSON: Correct.</p> <p>15 A. I don't know.</p> <p>16 Q. You are not aware of one?</p> <p>17 A. I am not aware of one.</p> <p>18 Q. Looking back on it, do you have a view as</p> <p>19 to whether Apollo and Paul Weiss on Apollo's behalf</p> <p>20 acted in good faith in dealing with Rashid?</p> <p>21 MR. KEHOE: Objection to the form.</p> <p>22 A. I am sorry, what do you mean by --</p> <p>23 Q. In the context of the expense review, do</p> <p>24 you have a view as to whether -- let's take Apollo</p> <p>25 first -- whether they were dealing with Mr. Rashid</p>

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<p>1 in good faith in trying to resolve the issues?</p> <p>2 A. We were trying to resolve the issues, and I</p> <p>3 don't have any recollection of a belief at any time</p> <p>4 that anyone was acting in bad faith.</p> <p>5 Q. Looking back on it, would you have done</p> <p>6 anything differently in representing Mr. Rashid?</p> <p>7 MR. KEHOE: Objection, calls for</p> <p>8 speculation.</p> <p>9 A. I don't know.</p> <p>10 Q. Would you have asked for a written</p> <p>11 common-interest agreement?</p> <p>12 MR. KEHOE: Objection. Calls for</p> <p>13 speculation.</p> <p>14 A. No.</p> <p>15 Q. No?</p> <p>16 A. I don't think I would have. I mean, I</p> <p>17 don't think I would have, candidly. I don't think</p> <p>18 we would have done anything differently, but I am</p> <p>19 not sure.</p> <p>20 Q. After the July 8, 2013 meeting with Paul</p> <p>21 Weiss, did you or anyone else from Crowell give</p> <p>22 Rashid advice regarding the existence of a common-</p> <p>23 interest privilege with respect to your</p> <p>24 communications with Paul Weiss?</p> <p>25 MR. KEHOE: Objection. Obviously that's</p>	<p>1 MR. KEHOE: You said something about one</p> <p>2 item?</p> <p>3 MR. THOMPSON: Yes, on 243, first sentence</p> <p>4 of the second paragraph. I may ask him a question</p> <p>5 about that.</p> <p>6 A. Okay.</p> <p>7 Q. Do you recall ever seeing this document</p> <p>8 before?</p> <p>9 A. It looks familiar to me, I am sure I saw</p> <p>10 it.</p> <p>11 Q. During the expense report?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall any discussion with Paul</p> <p>14 Weiss regarding this document?</p> <p>15 A. No.</p> <p>16 Q. Let me see if I can probe a little bit.</p> <p>17 Directing your attention to page 662, under section</p> <p>18 2, "Expense Submission." The second paragraph</p> <p>19 states in part: "Employees may delegate expense</p> <p>20 report preparation to another individual (EG</p> <p>21 assistant) however, the employee is ultimately</p> <p>22 responsible for timely and accurate submission of</p> <p>23 his/her expenses, regardless of who prepares the</p> <p>24 expense report."</p> <p>25 Do you recall any discussion with Paul</p>
<p>73</p> <p>1 attorney-client privilege.</p> <p>2 MR. THOMPSON: And you are instructing him</p> <p>3 not to answer the question.</p> <p>4 MR. KEHOE: Of course.</p> <p>5 Q. Let's look at Exhibit 4 in your binder.</p> <p>6 MR. THOMPSON: For the record, Exhibit 4 is</p> <p>7 a document Bates numbered Rashid, leaving out the</p> <p>8 0's, 659 through 74. It appears to be a document</p> <p>9 entitled: "Apollo Global Management Travel and</p> <p>10 Expense Reimbursement Policies and Procedures."</p> <p>11 Q. Mr. McGorty, I am going to direct your</p> <p>12 attention to a specific portion of the document and</p> <p>13 only that portion. Specifically, the discussion of</p> <p>14 expense submission that appears at Rashid 662 and</p> <p>15 goes over to 64. I will direct your attention to</p> <p>16 particular language, but if you would like to take a</p> <p>17 look at it and let me know when you are ready to</p> <p>18 respond to questions, I would appreciate it.</p> <p>19 (Witness reviewing document.)</p> <p>20 A. Sure. Up to 2.3?</p> <p>21 Q. I am going to briefly direct your attention</p> <p>22 to one line under "Payments" on the next page.</p> <p>23 A. Okay.</p> <p>24 MR. KEHOE: What page was it?</p> <p>25 MR. THOMPSON: 662 to 64.</p>	<p>75</p> <p>1 Weiss of that requirement?</p> <p>2 MR. KEHOE: To the extent it happened in</p> <p>3 July of 2013, I instruct you not to answer. If</p> <p>4 there is testimony you can give after August 1 of</p> <p>5 2013, if you like, you can answer.</p> <p>6 THE WITNESS: That has governed all of my</p> <p>7 answers so far.</p> <p>8 A. I would say that I recall later in the</p> <p>9 process, in other words after August 1st, having</p> <p>10 conversations with Paul Weiss about some of the more</p> <p>11 technical elements of the submission of expenses. I</p> <p>12 don't remember specifically what they were, I think</p> <p>13 they would be covered by what you just read for how</p> <p>14 the expenses were submitted or not submitted, so I</p> <p>15 think the answer is yes, with all of those caveats.</p> <p>16 Q. The next paragraph begins: "Each employer</p> <p>17 will be required to certify accuracy of his/her</p> <p>18 expense report prior to submission." Was that</p> <p>19 consistent with your understanding in how you</p> <p>20 assisted Rashid during the expense review.</p> <p>21 MR. KEHOE: The same objection, post-</p> <p>22 August 1st or after.</p> <p>23 A. I don't think the question called for a</p> <p>24 communication with Paul Weiss, in any event. Could</p> <p>25 you resay --</p>

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1 **Q.** Based on your understanding, whether that
2 is consistent with your understanding, in
3 representing Mr. Rashid during his expense review?
4 **A.** That he had the responsibility to serve via
5 his --
6 **Q.** Yes, sir.
7 **A.** I don't recall the details, but I think I
8 could say I have a recollection that he was required
9 to submit and certify his reports.
10 MR. HANUSIK: You are asking about his
11 previous expense reports?
12 MR. THOMPSON: Yes.
13 **Q.** Now I am confused. I was asking about the
14 expense reports covered by the review.
15 **A.** I don't recall anything different from what
16 you just read.
17 **Q.** Thank you.
18 Going to the next page, Rashid 663, under
19 Section 2.2, "Substantiation of Travel and Business
20 Expenses." There is a statement that the IRS
21 requires that any tax deductible
22 travel/entertainment cost include documentation of,
23 and it gives a list of things. After the bullet
24 points it contains: "Any expense reports that do
25 not adequately address the who, what, when, where

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1 tried to fill in the names and titles of those who
2 attended, if it was not already included in the
3 materials we got from Paul Weiss, and the purpose of
4 the meeting was one of the things that we
5 determined. So I don't have a recollection of
6 applying this as you described, but looking at it, I
7 think this is criteria we tried to apply.
8 If we couldn't meet any of this criteria,
9 we would put it in the other bucket, even if we
10 couldn't find documentation to support each of these
11 criteria, we would put it in the other bucket.
12 **Q.** Do you recall having discussion with Paul
13 Weiss regarding the who, what, when, where, and why
14 requirements set forth in the document?
15 **A.** No.
16 MR. KEHOE: The subject is the same post
17 and prior to August 1st.
18 **Q.** Let me ask you to turn to Exhibit 6 in the
19 binder.
20 MR. THOMPSON: Exhibit 6 bears Bates
21 numbers Apollo 42137 through 39. It appears to be
22 an e-mail string, the last of which is from Susan
23 Maisel, dated July 17, 2013, to Sippoura Barzideh
24 and, also, for the record, in the upper left-hand
25 corner of the first page, there is a designation

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1 and why of these expenses will be rejected by Apollo
2 shared services and the employee's Amex will not be
3 paid until such time adequate documentation is
4 received."
5 Is that consistent with your understanding
6 of Apollo's requirements at the time you were
7 representing Mr. Rashid in connection with the
8 expense review?
9 **A.** Just to clarify, you are asking if it was
10 my understanding that that was Apollo's practice or
11 policy?
12 **Q.** Yes.
13 **A.** I know of no other policy than what is
14 written here.
15 **Q.** And conducting the expense review, did you
16 adhere to the standard?
17 **A.** Well, the travel and entertainment costs
18 that this applies to was a subset of the expenses
19 that we looked at. I can't say I remember the
20 criteria one way or another for how we looked at
21 travel and entertainment expenses as described here.
22 I am fairly certain that each one had an amount, and
23 a date and place it occurred. I think we knew what
24 the expenses were.
25 I am reading down the list. I think we

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1 "Laufer," L A U F E R, "Gregory." It's my
2 understanding that that appears because Apollo --
3 these documents were produced on Apollo's behalf and
4 apparently Mr. Laufer was the last one that printed
5 it out, but that did not appear in the original
6 e-mail string.
7 MR. HANUSIK: Can I ask a question?
8 MR. THOMPSON: Sure.
9 MR. HANUSIK: The document reflects, as you
10 noted, sort of the last series of e-mails appear to
11 be communications between Paul Weiss' people
12 themselves or Paul Weiss' people generally. So one
13 from a Paul Weiss person to themselves; then one
14 from a Paul Weiss person to another Paul Weiss
15 person; and then, I guess, Mr. Laufer as well, but
16 the last reference to a document, e-mail to Mr.
17 McGorty, reflects there is an attachment, but I
18 don't see an attachment to this. Is there an
19 attachment?
20 MR. THOMPSON: I believe we will be looking
21 at a version that has the attachment in a few
22 moments.
23 MR. HANUSIK: You are not asking about the
24 attachment?
25 MR. THOMPSON: Not at this point.

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1 **Q.** Let me refer you to page Apollo 42138. At
2 the bottom of that page, Mr. McGorty, appears to be
3 an e-mail that you sent to Susan Maisel and Mr.
4 Zelenko on July 8th, 2013, at 9:57 p.m. And in the
5 third paragraph you state: "We have Mr. Rashid
6 coming in tomorrow morning to try to help us go
7 through some of the expenses, so at a minimum, a
8 copy of the spreadsheet would be really useful
9 between now and tomorrow."

10 First of all, was it a truthful statement
11 when you said that Mr. Rashid was coming in tomorrow
12 morning?

13 MR. KEHOE: Objection. Common-interest
14 privilege. Instruct the witness not to answer.

15 MR. HANUSIK: Was it a truthful statement
16 that he expected him to come in to mark this?

17 MR. THOMPSON: I will accept that
18 amendment.

19 MR. KEHOE: This is a discussion in July of
20 2013, so I instruct you not to answer.

21 **A.** Okay.

22 MR. THOMPSON: All right. So the witness
23 has been instructed not to answer.

24 **Q.** When you requested a copy of the
25 spreadsheet, what were you referring to?

1 recall a confidentiality agreement.

2 **Q.** I believe you previously testified there
3 was already a common-interest understanding, why
4 would a confidentiality agreement be necessary?
5 **A.** Well, you've got to ask Paul Weiss that,
6 but my understanding is that the confidentiality
7 agreement would govern our disclosure of the
8 physical materials that would be, I am guessing,
9 proprietary, all Apollo business-related documents,
10 the expense reports. I am thinking that is what it
11 would have been, the nature of the materials they
12 disclosed to us. That's common.

13 **Q.** Let me ask you to turn to Exhibit 7 and
14 this e-mail attaches to what appears to be an
15 agreement.

16 MR. KEHOE: For the record, it's Bates
17 Number Apollo 109063 through 69. It appears to be
18 an e-mail string that ends with the July 17, 2013,
19 10:46 p.m. e-mail from Ms. Maisel to Mr. Barzede,
20 re: Finzi letter PDF.

21 Then there appears to be a letter agreement
22 in the last two pages. I have a couple of questions
23 for you about the letter agreement, Mr. McGorty, if
24 you can take a moment to look it over and let me
25 know whether you have seen it previously.

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1 MR. KEHOE: The same objection.

2 MR. THOMPSON: You are instructing him not
3 to answer?

4 MR. KEHOE: The same objection and the same
5 instructions.

6 **Q.** The next e-mail up, from Mr. Finzi, states:
7 "Glen, we're okay with sending you the sheet on the
8 understanding that it will be subject to the terms
9 of the confidentiality letter/agreement we expect to
10 agree on shortly. Let us know if that works for
11 you."

12 Then your response is: "Absolutely fine if
13 it's subject to future confidentiality agreement."

14 What confidentiality agreement does that
15 reference, Mr. McGorty?

16 MR. KEHOE: To the extent that the
17 confidentiality agreement lived after August 1,
18 2013, you can answer.

19 **A.** In my recollection, at some point after
20 that, I think there was some confidentiality
21 agreement between Paul Weiss and Crowell which
22 governed their disclosure to us of the material that
23 we worked on in connection with the review, and that
24 extended well after August 1st. In the limited time
25 after August 1st, that happened in this case. So I

1 (Witness reviewing document.)

2 **A.** I believe I have, okay.

3 **Q.** And is this packet, in fact, a
4 confidentiality agreement as executed between Paul
5 Weiss and Crowell?

6 **A.** I believe so.

7 **Q.** Are you aware of any other agreement being
8 entered into between those parties before September
9 of 2013?

10 **A.** Any other written agreement?

11 **Q.** Start with written agreement.

12 **A.** Yes -- no. I mean, I don't recall any
13 other written agreement.

14 **Q.** Are you aware of any other unwritten
15 agreement?

16 **A.** To the extent there was a common-interest
17 understanding between the parties, I think that was
18 an agreement that would have predated September, I
19 think you said before September, but as far as
20 agreement in writing, this was it.

21 **Q.** Have you had a chance to read the letter?

22 **A.** I did just now.

23 **Q.** Does it accurately reflect, to the best of
24 your recollection, what had been discussed as
25 between Crowell and Paul Weiss about

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1 MR. THOMPSON: Thank you for that
2 clarification.
3 **A.** Okay.
4 **Q.** Is that account of what Apollo told Rashid
5 about his employment status between July and
6 September of 2013 consistent with your recollection?
7 MR. KEHOE: To the extent it calls upon
8 conversations with you and Mr. Rashid, it's covered
9 by attorney-client privilege. To the extent it's
10 dealing with conversations prior to August the 1st,
11 that's a common-interest privilege and it goes to
12 the attorney-client privilege.
13 **A.** With those caveats, I would say that I
14 believe that was the state, at least in the latter
15 part of our involvement and through representations
16 of counsel, not Mr. Rashid.
17 **Q.** Do you know when Apollo told Rashid that
18 his employment would be terminated?
19 **A.** I am going to place it in September or
20 October of 2013. I don't remember the specific
21 date, but it was definitely in that timeframe.
22 **Q.** Let me refer you to page 2 of the letter,
23 the second paragraph, last sentence, states: "To
24 the contrary, had Mr. Rashid believed that his
25 interests were adverse to Apollo at the time, he may

1 **A.** Okay.
2 **Q.** I direct your attention to paragraph 4 on
3 the first page, which states: "On or about July 3,
4 2013, Mr. Rashid sent an e-mail advising me and
5 others that he had retained Dan Zelenko of Crowell &
6 Moring, LLP."
7 Paragraph 5 states: "In the ensuing months
8 I participated in and am otherwise aware of written
9 and verbal communications between Crowell & Moring
10 and Paul Weiss. I viewed those communications as
11 being between two separately represented parties and
12 did not view them as privileged. I do not recall
13 thinking of or approaching those discussions as
14 settlement discussions."
15 Do you have any reason to believe that Mr.
16 Finzi, in his declaration, was not truthful in
17 stating that he did not regard those communications
18 as being privileged?
19 MR. KEHOE: Objection to the form. It's
20 speculation.
21 **Q.** You can answer.
22 **A.** I mean, we have a similar formulation. I,
23 too -- it is my recollection and my belief at the
24 time that we had an understanding; it was Mr.
25 Finzi's that he did not believe at the time that we

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1 have determined that it was not in his interest to
2 provide extensive cooperation to the firm through
3 its outside counsel and forensic auditor."
4 Do you have any reason to disagree with
5 what Mr. Zelenko told the SEC in that sentence?
6 **A.** No.
7 **Q.** I ask you to turn to Exhibit 8A?
8 MR. THOMPSON: For the record, Exhibit 8A
9 is a declaration of Roberto Finzi.
10 **Q.** Have you seen this previously, Mr. McGorty?
11 **A.** I have seen it, but I have not read it. I
12 think I saw -- I remember seeing that Roberto filed
13 an affidavit, but I have not read it. I can, if you
14 would like.
15 **Q.** I would direct your attention to portions
16 of it.
17 Just preliminarily, are you personal
18 friends with Mr. Finzi?
19 **A.** Yes.
20 **Q.** So you are good friends?
21 **A.** I would consider us good friends.
22 **Q.** Let me direct your attention to, you're
23 welcome to read the entire thing if you would like.
24 As a matter of fact, why don't you take some time to
25 do that.

1 had that understanding. I am certain that he is
2 being truthful in his representation that that was
3 his belief at the time, just as I am certainly
4 truthful that I am representing what I believed at
5 the time.
6 **Q.** Mr. Finzi specifically referenced -- let me
7 read again the last sentence of paragraph 5. "I do
8 not recall thinking of or approaching those
9 discussions as settlement discussions."
10 Do you have any reason to believe that he
11 is not truthful in relating what his belief was at
12 the time?
13 MR. KEHOE: The same objection to form.
14 **A.** If he said he doesn't recall thinking of it
15 that way, then I believe he is speaking the truth.
16 He doesn't recall thinking of it that way.
17 If you are asking me whether I do recall
18 thinking of it that way, yes. If you are asking
19 whether or not I think it objectively was that,
20 based on the task in front of us, I would say yes,
21 but I certainly do not think in Mr. Finzi is not
22 being truthful.
23 **Q.** Let's talk about your belief. I thought
24 you indicated previously that you did not recall any
25 discussion with Paul Weiss to the effect that the

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<p>1 discussions were subject to a settlement privilege?</p> <p>2 A. No. You asked whether or not I discussed</p> <p>3 with Paul Weiss whether or not our communications</p> <p>4 were subject to a settlement privilege.</p> <p>5 Q. Right. That's what I just asked.</p> <p>6 A. I'm sorry. I thought you asked whether I</p> <p>7 believed at the time we were trying to resolve Mr.</p> <p>8 Rashid's claims that Apollo had with him.</p> <p>9 No, you are right. We never talked about,</p> <p>10 we never labeled, if you will, his communications as</p> <p>11 being a settlement privilege.</p> <p>12 Q. Right. Did you think at the time that they</p> <p>13 were subject to a settlement privilege, Rule 408</p> <p>14 specifically?</p> <p>15 A. I think we were working to resolve the</p> <p>16 case. I don't recall ever being asked at the time</p> <p>17 whether or not I thought whether or not those</p> <p>18 communications would eventually be subject to the</p> <p>19 evidentiary rule or whether they would be</p> <p>20 applicable. But if you are asking if at the time I</p> <p>21 thought we were trying to settle Apollo's dispute</p> <p>22 with Mr. Rashid, I did. That's how it started.</p> <p>23 That's how we got involved in the case, and</p> <p>24 relatedly, to assist Apollo in settling these</p> <p>25 concerns that the SEC apparently had with them,</p>	<p>1 Mr. Rashid, on the one hand, and Paul Weiss and</p> <p>2 Apollo on the other hand."</p> <p>3 Do you have any reason to believe that Mr.</p> <p>4 Finzi is not accurately stating his recollection?</p> <p>5 A. No. I am sure he is stating his</p> <p>6 recollection as he described it.</p> <p>7 Q. Do you think Mr. Finzi's statement that I</p> <p>8 just read into the record is reasonable, based on</p> <p>9 the course of dealing with Paul Weiss, as you recall</p> <p>10 it?</p> <p>11 MR. KEHOE: Objection to the form.</p> <p>12 MR. HANUSIK: Objection.</p> <p>13 A. He is stating his recollection. If you are</p> <p>14 asking me whether or not I think, independent of his</p> <p>15 statement about his recollection, I think it's</p> <p>16 reasonable for somebody to perceive our</p> <p>17 communications as being pursuant to a common</p> <p>18 interest, I do.</p> <p>19 Q. No. I am asking whether you think it's</p> <p>20 reasonable for Mr. Finzi to perceive that there was</p> <p>21 no common-interest agreement as between Crowell and</p> <p>22 Paul Weiss?</p> <p>23 MR. KEHOE: Objection to the form.</p> <p>24 A. I don't know how to answer that question.</p> <p>25 From my perspective, I believe we had a</p>
<p>93</p> <p>1 based on your examination.</p> <p>2 Q. Do you recall discussion or do you recall</p> <p>3 thinking at the time in 2013 that your</p> <p>4 communications with Paul Weiss on Mr. Rashid's</p> <p>5 behalf were subject to the protection of Rule 408?</p> <p>6 A. I don't recall. I don't recall thinking</p> <p>7 that.</p> <p>8 Q. You just didn't think about it one way or</p> <p>9 the other?</p> <p>10 A. Yes. I think I didn't think of it in those</p> <p>11 terms at the time, one way or the other. No, I</p> <p>12 didn't at the time, but I did think of the project</p> <p>13 as I have described it at the time.</p> <p>14 Just to clarify, you had asked about Mr.</p> <p>15 Finzi's sentence, which is about his thinking about</p> <p>16 the nature of the discussions, the process?</p> <p>17 Q. Yes.</p> <p>18 A. Not labeling it as such, the</p> <p>19 communications. So I am trying to answer the</p> <p>20 question the same way that Mr. Finzi said in his</p> <p>21 response.</p> <p>22 Q. And let me direct you to paragraph 9 of Mr.</p> <p>23 Finzi's declaration where he states in the first</p> <p>24 sentence: "I do not recall any common interest or</p> <p>25 joint-defense agreement between Crowell & Moring and</p>	<p>95</p> <p>1 common-interest understanding. Mr. Finzi is</p> <p>2 suggesting his recollection is different than mine.</p> <p>3 Is it unreasonable for him to have the recollection</p> <p>4 he has? I can't say.</p> <p>5 Q. Do you think it's unreasonable for him to</p> <p>6 reach the conclusion that there is no common</p> <p>7 interest?</p> <p>8 MR. KEHOE: Object to the form. It's</p> <p>9 complete speculation.</p> <p>10 MR. HANUSIK: Objection. It's been asked</p> <p>11 and answered.</p> <p>12 A. I don't have some knowledge of what he is</p> <p>13 basing his recollection on. So I can't really</p> <p>14 answer whether it's reasonable from his perspective.</p> <p>15 Q. Do you think it's an honest difference of</p> <p>16 opinion?</p> <p>17 MR. KEHOE: Objection to form.</p> <p>18 A. If there is a different of opinion,</p> <p>19 certainly it's not dishonest. I am sure everyone is</p> <p>20 approaching this in good faith.</p> <p>21 Q. You can set that aside for a moment. Let's</p> <p>22 go on to Exhibit 9. Exhibit 9 is Bates Number</p> <p>23 Apollo 109059 through 109062, and the spreadsheet</p> <p>24 that is attached does not have separate Bates</p> <p>25 Numbers on it.</p>

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1 MR. THOMPSON: For the record, the last
2 e-mail in the series is a July 17, 2013, e-mail from
3 Susan Maisel to Sippoura Barzede. Those are two
4 lawyers at Paul Weiss. It's my understanding that
5 one was forwarding a previous mail string to the
6 other. So what I want to focus on, Mr. McGorty, is
7 just the prior e-mail string.

8 Q. In the page Bates numbered 109059, middle
9 of the page, there is an e-mail from Ms. Maisel to
10 you, Mr. McGorty, dated July 8, 2013, at 7:38 p.m.
11 Subject: Ali Rashid, and it appears to attach a
12 document. Have you had a chance to not review the
13 attachment, but look at it to identify what it is?

14 A. I believe I know what it is.

15 Q. What is the attachment?

16 A. This appears to be the original spreadsheet
17 provided to Crowell from Paul Weiss, that I believe
18 originated from Apollo's accounting department,
19 related to Mr. Rashid's expenses.

20 Q. And your belief that it originated from
21 Apollo's accounting department is based on what?

22 A. Looking at the document and seeing the
23 information contained in there.

24 Q. Do you remember having any discussion with
25 Ms. Maisel or others at Paul Weiss about the

1 A. I think the whole document came from the
2 accounting department.

3 Q. Specifically, do you have an understanding
4 of whether the information in the long description
5 field bore some relation to expense reports that Mr.
6 Rashid had submitted?

7 MR. KEHOE: Objection to the form.

8 A. I don't know who the author was of the
9 descriptions in the long description category. I
10 think that's what you are asking me.

11 Q. Well, I am asking whether you have an
12 understanding that it related to Mr. Rashid's
13 submitted expense reports, whether they were
14 originally authored by an assistant or Mr. Rashid
15 himself.

16 MR. KEHOE: To the extent you received any
17 of that information from conversations with counsel,
18 that's governed by attorney-client, with your
19 client.

20 A. Without relating any information that I got
21 from Mr. Rashid or information that I subsequently
22 had in exchange with Paul Weiss, I don't remember
23 having any specific direction as to the ultimate
24 origin of where the words in that column came from.

25 Q. Leaving aside any discussions you may have

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1 spreadsheet that is being transmitted to you?

2 MR. KEHOE: To the extent it's in July of
3 2013, it's subject to the privilege. I instruct you
4 not to answer. If it's post-August 1, 2013, you can
5 answer.

6 A. I don't remember any conversation one way
7 or another about it. There were definitely
8 conversations with Paul Weiss after August 1st about
9 the spreadsheet or at least in the version of the
10 spreadsheet that existed at that time, which was our
11 work product, working off of this original
12 spreadsheet, to identify and allocate expenses.

13 Q. Looking at the spreadsheet, let's just look
14 at the first page of it, it begins with entries in
15 January of 2011, and there are different headings to
16 the columns. Is it your understanding that this is
17 information that was taken from Apollo's accounting
18 system or time and expenses?

19 A. That was my understanding of where this
20 came from.

21 Q. What is your understanding of where the
22 information set forth in the long description or as
23 it's stated here, long abbreviation DSCR, what is
24 your understanding of where that information came
25 from?

1 had with Mr. Rashid --

2 A. Right.

3 Q. Did you have any understanding based on
4 communications with Paul Weiss as to where the
5 information in the long description field came from?

6 A. Subject to the date at issue, I don't
7 recall. I don't recall Paul Weiss telling me
8 exactly where that came from.

9 Q. Did you ever have any reason to doubt the
10 accuracy of the information set forth in the long
11 description field?

12 MR. KEHOE: Objection to form.

13 A. Just to clarify.

14 Q. I will ask a different question: Did you
15 ever come to have any reason to doubt that the
16 information set forth in the long description field
17 accurately reflected what was in Apollo's accounting
18 system for time and expenses?

19 A. No.

20 Q. Next column over is labeled "personal,"
21 with a question mark. The field appears to be
22 populated entirely with N's. Do you have an
23 understanding that the N is intended to connote
24 "no"?

25 A. Not based on any information other than my

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<p>1 perception of the document as it looks. I am sure 2 that's what that meant.</p> <p>3 Q. Did you have an understanding of where the 4 information set forth in that column came from?</p> <p>5 A. I don't, other than the accounting 6 department where the whole document, I think, came 7 from.</p> <p>8 Q. Right. Let me ask this: Was it your 9 understanding that all of the expenses listed in 10 this spreadsheet were expenses that Rashid had 11 originally billed as business expenses?</p> <p>12 A. Well, there's some that are -- at least 13 there are some that are not business expenses. They 14 have Y's, like on page 24, for example.</p> <p>15 Q. Yes. You're correct, there are some Y's.</p> <p>16 A. Again, I am assuming that the personal 17 column is the distinction in the accounting 18 department.</p> <p>19 Q. I apologize. I didn't recognize there were 20 some Y's in that column.</p> <p>21 Under "Payment" it appears that there's 22 binary choice between OOP or AMX, is it your 23 understanding that OOP refers to out of pocket?</p> <p>24 A. Yes. I mean, not based on recollection of 25 this, but I would be surprised if the abbreviation</p>	<p>1 MR. HANUSIK: This is the first time that 2 Crowell gets this.</p> <p>3 MR. THOMPSON: That doesn't mean, 4 necessarily mean that information hadn't been 5 inputted into a spreadsheet based on information 6 provided by Mr. Rashid.</p> <p>7 A. I understand. I don't recall whether this 8 -- this is the first spreadsheet received. I don't 9 recall whether it had already included information, 10 which may or may not have been provided. Based on 11 the dates, I would say that would have been under 12 the common-interest understanding, so I can't speak 13 to it anyway, but I don't have a recollection of 14 that.</p> <p>15 Q. You can set that aside. I am going to flip 16 you around in the binder a little bit and ask you to 17 go back to Exhibit 1 A?</p> <p>18 A. The time sheets?</p> <p>19 Q. Yes.</p> <p>20 On CMAR SEC 7, the second entry down is a 21 July 10, 2013 entry by you for teleconference with 22 Mr. Finzi and Mr. Zelenko, regarding status, follow- 23 up discussion regarding next steps.</p> <p>24 MR. KEHOE: What date, I am sorry?</p> <p>25 MR. THOMPSON: July 10th. The second entry</p>
<p>101</p> <p>1 covered something other than that.</p> <p>2 Q. AMX referred to an Amex card?</p> <p>3 A. I would assume so.</p> <p>4 Q. Do you have an understanding of the source 5 of the information set forth in the "comments" 6 field?</p> <p>7 A. I don't, other than coming from the 8 accounting department. Originally, I don't know 9 where that came from. What gives me pause is that 10 it's the kind of thing we were trying to add to it, 11 so I don't know the source of it in this version, if 12 this is the first version that we got.</p> <p>13 Q. Right. When you had -- Paul Weiss and 14 Crowell had at least one meeting, if not more by 15 then, so you are not certain whether this was based 16 on information provided by Mr. Rashid or some other 17 source?</p> <p>18 MR. KEHOE: Objection to the form. 19 Anything from Mr. Rashid, I would instruct you not 20 to answer.</p> <p>21 THE WITNESS: Right, of course.</p> <p>22 MR. HANUSIK: Are you suggesting that the 23 information might have come from Crowell, the record 24 you have presented.</p> <p>25 MR. THOMPSON: I am asking.</p>	<p>103</p> <p>1 from the top.</p> <p>2 Q. Any chance you have a recollection of that 3 discussion?</p> <p>4 A. If I did, I don't think I could answer it 5 anyway, but I happen not to have a recollection of 6 that.</p> <p>7 Q. Do you know whether you had taken notes 8 during this conversation?</p> <p>9 A. I don't know if I did take notes in that 10 conversation, but if I did, I would have already 11 provided them.</p> <p>12 Q. To your counsel?</p> <p>13 A. Yes.</p> <p>14 MR. THOMPSON: For the record, no such 15 notes have been provided to us. I assume that that 16 would be a work-product privilege asserted, nor did 17 we request them.</p> <p>18 Q. Do you know whether a file memo was 19 prepared?</p> <p>20 A. I don't.</p> <p>21 Q. I take it your answers would be the same if 22 I asked about the July 11, 2013 entry regarding 23 another teleconference with Paul Weiss. Do you see 24 that?</p> <p>25 A. July 11th, that's also -- yes, I see that.</p>

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<p>1 Yes, I don't remember that particular conversation 2 either.</p> <p>3 Q. That also refers to a meeting with BDO; 4 what is that a reference to?</p> <p>5 A. I have a recollection that BDO was the 6 audit company that was assisting Paul Weiss and Mr. 7 Rashid in their effort to recreate the expense 8 reports.</p> <p>9 Q. Do you have a recollection of having a 10 meeting where both Paul Weiss personnel and BDO 11 personnel were present?</p> <p>12 A. Not specifically, only to the extent that I 13 recall a meeting with Paul Weiss at some point and 14 if BDO was present at that meeting, then I have a 15 recollection of that meeting, but not specifically 16 of BDO's presence.</p> <p>17 Q. I am not going to ask you about all of your 18 entries and references to teleconferences, but would 19 it be fair to say that if I asked you whether you 20 had a recollection of those specific 21 teleconferences, you would not have a specific 22 recollection at a particular point in time?</p> <p>23 A. Let me look through them in case something 24 sticks out.</p> <p>25 (Witness reviewing documents.)</p>	<p>1 turn to Exhibit 10 in your binder. 2 Exhibit 10, for the record, is a document, 3 Bates Number Apollo 109070 through 71. It attaches 4 approximately 2 inches of additional materials, 5 which are mostly unBates numbered but some of the 6 materials do have Bates Numbers on them. The 7 material formatted as spreadsheets do not, but 8 beginning with page Apollo 109072 are what appear to 9 be copies of American Express corporate card 10 statements that go from 10072 to 109322. 11 Then, there is another spreadsheet attached 12 behind a Bates Numbered document 109323, which 13 indicates that the document is available in native 14 format. So I am not going to be asking questions 15 about the Amex bills. 16 Again, we go back to the first page of the 17 document, there is a transmittal from Ms. Maisel to 18 Ms. Barzedeh. It was an internal Paul Weiss 19 transmittal of an earlier e-mail string. The one I 20 would like to focus on, Mr. McGorty, is Ms. Maisel, 21 July 10, 5:36 p.m. e-mail to you and Mr. Zelenko, 22 where she states: "Dan, Glen, pursuant to our 23 confidentiality agreement, attached please find 24 various documents related to Ali Rashid. Thanks, 25 Susan."</p>
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<p>1 How far do you want me to go? I went up to 2 August, but I can keep going. None of the time 3 entries reflecting teleconferences or meetings 4 helped me remember what meetings there were and what 5 we talked about, beyond sort of the general 6 descriptions in here.</p> <p>7 Q. That would include the reference on page 9 8 to the July 17th meeting, for which you billed 6- 9 and-a-half hours, just to close the loop on that.</p> <p>10 A. I do remember going to Paul Weiss' offices 11 for a meeting. That could be the one in my head. 12 There's one that was there, so that could be it.</p> <p>13 MR. HANUSIK: Was Mr. Rashid present for 14 the one that you recall?</p> <p>15 THE WITNESS: I remember him being present. 16 I don't remember the auditors being present, but 17 that makes sense, as I said, that they were.</p> <p>18 Q. You have testified previously about 19 communications with Paul Weiss subject to various 20 instructions that you have been given, but does this 21 assist you at all in remembering any additional 22 details about those communications?</p> <p>23 A. It doesn't.</p> <p>24 Q. It does not.</p> <p>25 Let me refer you to -- I would ask you to</p>	<p>1 First, do you have an understanding of what 2 is being referenced by the confidentiality 3 agreement?</p> <p>4 MR. KEHOE: Can I ask one question before 5 we talk about this?</p> <p>6 MR. THOMPSON: Sure.</p> <p>7 MR. KEHOE: The matter that is blocked on 8 top here, was that blocked by the SEC?</p> <p>9 MR. THOMPSON: It was not blocked by the 10 SEC.</p> <p>11 MR. KEHOE: When Apollo and/or Paul Weiss 12 delivered this to the SEC, this e-mail from Ms. 13 Maisel to Ms. Barzedeh, they blocked off this 14 information?</p> <p>15 MR. THOMPSON: As we sit here, Greg, I 16 don't know whether that is something that is 17 deliberately blocked off or what, but that's how we 18 received it.</p> <p>19 MR. KEHOE: That was not the SEC, it was 20 either Apollo or Paul Weiss?</p> <p>21 MR. THOMPSON: It was not us.</p> <p>22 Q. So I think the question was whether you --</p> <p>23 MR. KEHOE: I'm sorry.</p> <p>24 MR. THOMPSON: It's okay.</p> <p>25 Q. -- whether you have an understanding of</p>

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1 Ms. Maisel's reference to our confidentiality
2 agreement?
3 **A.** Only that I assume it's the one we saw
4 before.
5 **Q.** So you are referring to the confidentiality
6 agreement marked as Plaintiff's Exhibit 8, right?
7 That's the one I don't have, so I just want to be
8 accurate.
9 **A.** Yes. It's the attachment to the e-mail
10 chain on 7.
11 MR. KEHOE: Just for the record, the reason
12 I didn't object to that question is because the
13 confidentiality agreement extends past August 1st.
14 THE WITNESS: That's why I answered it.
15 MR. THOMPSON: Right.
16 **Q.** So I stand corrected. The confidentiality
17 agreement was part of Exhibit 7. That is the
18 agreement that you understand Ms. Maisel was
19 referring to in Exhibit 10?
20 **A.** Yes.
21 **Q.** You have no reason to believe that you did
22 not receive the e-mail; correct?
23 **A.** Correct.
24 **Q.** Do you recall any discussions with Paul
25 Weiss personnel regarding the attachments to the

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1 project expanded to include more dates. I don't
2 remember the dates.
3 MR. KEHOE: Without waiving any objection
4 to that this could have been processed -- obviously
5 at the appropriate time I am going to object to the
6 statute of limitations for matters going back that
7 far, but we would just preserve that.
8 **A.** It does not look like it has.
9 **Q.** I am sorry?
10 MR. HANUSIK: There is no question.
11 **A.** I just want to be complete. You had asked
12 me whether or not this is what the spreadsheet was.
13 It looks like it stops, but it says last page 48 of
14 77, and then there is nothing after that, so unless
15 I am misreading it, I would describe it as a partial
16 spreadsheet, but there are other documents.
17 For your benefit, I just want to point that
18 out. I don't know if there is something else that
19 is supposed to be there. It sort of ends.
20 The next pages don't have that, so I just
21 point it out in case it's helpful.
22 **Q.** It looks like the expenses go to through
23 April 3rd of 2013 and there had been a meeting with
24 Mr. Rashid on April 1st of 2013; correct?
25 **A.** Okay.

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1 e-mail?
2 MR. KEHOE: Any discussions post-August
3 1st, no objection; prior to that objection.
4 THE WITNESS: For sure.
5 **A.** Subsequent to that day, I certainly
6 remember discussing how we were using the credit-
7 card statements in connection with our review, that
8 we were using these documents to assist in the
9 project, to help Mr. Rashid and Apollo go through
10 the expenses.
11 **Q.** In addition to the credit-card statement,
12 there is another spreadsheet which appears to start
13 in January of 2010. Do you see that?
14 MR. KEHOE: Are you looking at the first
15 spreadsheet? I'm sorry.
16 MR. THOMPSON: I'm sorry. Yes, I am. This
17 is the spreadsheet that is right behind the page
18 that says this document is available in native
19 format, Bates Number 109071?
20 **A.** Yes.
21 **Q.** So is it your recollection that Apollo and
22 Paul Weiss were now providing expenses back to
23 January of 2010 or, as I believe, the first
24 spreadsheet started in 2011; correct?
25 **A.** I believe I remember at some point the

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1 **Q.** I know you have testified about your
2 general recollection before. I just want to ask
3 specifically about the July 17th meeting, just so
4 the record is absolutely clear.
5 Do you recall any discussion at that
6 meeting about confidentiality?
7 MR. HANUSIK: Are you talking about a
8 meeting with his client and Paul Weiss.
9 MR. THOMPSON: No, I am referring to --
10 well, I am referring to the meeting that was
11 referenced in Exhibit 1A, the time sheet, the entry
12 that we looked at previously, July 17th entry, which
13 reflects the 6.5 hour time?
14 **A.** I remember the entry. I don't remember
15 what was discussed at the meeting.
16 **Q.** You don't remember anything about the
17 specifics of the meeting?
18 **A.** It's also within the timeframe. I don't
19 know if I can answer if I do recall. As I said
20 earlier, I don't have a recollection of all the
21 topics that were discussed at the meeting, including
22 the one you mentioned.
23 **Q.** I just want to be clear. I think you can
24 answer this even subject to the instruction; do you
25 have any recollection of a July 17, 2013 meeting

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<p>1 specifically, as opposed to a general recollection 2 of conversations in the period? 3 A. I recall a meeting with Mr. Rashid at Paul 4 Weiss. Unless there were multiple ones, that would 5 be the one that I have in my head. I don't recall 6 the specific topics that were discussed. 7 Q. Do you recall there being any discussion of 8 confidentiality? 9 A. That would include that. My lack of 10 recollection of the topics discussed would include 11 that I don't recall. 12 Q. Do you recall there being any discussion of 13 common interest? 14 MR. KEHOE: To the extent we are talking 15 about within the time, I instruct you not to answer. 16 However, he said he did not recall what the topics 17 were. I don't know what the question is. 18 If you don't recall you don't recall. 19 MR. THOMPSON: I am trying to be specific 20 so the record is clear. I think he can answer 21 whether or not he recalls without violating your 22 instruction, that I don't agree with. 23 MR. KEHOE: I think it's easier to say 24 without getting into the details, do you recall what 25 was discussed, the topics of discussion. You answer</p>	<p>1 because he doesn't answer, he doesn't recall the 2 topic. If you are going turn that into, oh, it did 3 not happen, then I am going to object. 4 So it's just easier to object to the 5 question and say it's within the common-interest 6 timeframe, because I see where this is going. 7 MR. THOMPSON: Are you instructing him not 8 to answer? 9 MR. KEHOE: I am right now. I thought it 10 might be easier to say that he doesn't recall what 11 the topics are, but now that I see what you are 12 trying to develop, I am just going to cut it off. 13 Q. Are you declining to answer the pending 14 question? 15 A. I have no choice. 16 Q. Do you have a recollection of whether there 17 was any discussion at the July 17th meeting 18 regarding possible SEC interest in Mr. Rashid's 19 expense submissions? 20 MR. KEHOE: The same objection. 21 A. I can't answer it. 22 MR. HANUSIK: Can I ask for a 23 clarification? 24 MR. THOMPSON: You can ask. 25 MR. HANUSIK: The question seemed to</p>
<p>113</p>	<p>115</p>
<p>1 "yes" or "no." If it's "no," we can move on. If 2 it's "yes," there is something else. 3 A. I think I said, other than a general idea 4 of why we were there, which I remember, I don't 5 recall a discussion of any topic, including the 6 common interest. 7 MR. THOMPSON: I appreciate your comment, 8 Greg, you want to be specific for the record. 9 Q. Do you recall there being any discussion 10 about the applicability or non-applicability of Rule 11 408? 12 A. I don't. 13 Q. Do you have any recollection, one way or 14 the other, of the possibility that Rashid might be 15 terminated? 16 A. At that meeting, I don't recall. 17 Q. As to that meeting, do you have a 18 recollection of whether or not there was a 19 discussion of negotiation of a separation agreement? 20 MR. KEHOE: We are getting into -- now you 21 are getting into the actual terms of what it is and 22 saying because he doesn't recall it didn't happen. 23 If we are going down that road, I am going 24 to object and instruct you not to answer because I 25 am not going to deal with that. The Judge -- merely</p>	<p>1 presume that the meeting was with Paul Weiss. 2 MR. THOMPSON: I think that's what the time 3 entry said. 4 MR. HANUSIK: The time entry says it was at 5 Paul Weiss. I just want to make sure that you are 6 not misrepresenting what the time entry says. 7 Q. Let me ask that: Do you believe there was 8 a meeting at Paul Weiss on July 17, 2013, where no 9 Paul Weiss attorneys were present? 10 A. My recollection of that meeting is while 11 Paul Weiss attorneys were present for a portion of 12 the meeting, it was much more of a working session. 13 Q. With BDO? 14 A. Or the documents. I don't recall. As I 15 said earlier, I don't recall BDO being present 16 there, but they may have been. But I recall it was 17 one of those sort of working in their office space. 18 It doesn't mean that there weren't some Paul Weiss 19 attorneys there at some point, but it was not a six- 20 hour meeting with Paul Weiss going, for as much as I 21 would enjoy their company, for that long, that's a 22 long time. 23 Q. Did someone at Crowell prepare a file memo 24 or summary regarding that July 17, 2013 session? 25 A. I have not reviewed one. Not that I</p>

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1 recall, but it's possible.
 2 **Q.** Did Crowell prepare a written report to
 3 Rashid about the meeting?
 4 **A.** I don't think I can answer that because if
 5 we did, we would have been attorney-client.
 6 **Q.** I am not asking what the report said, I am
 7 asking --
 8 **A.** Oh. I don't recall if he was present at
 9 the meeting.
 10 **Q.** Other than any file memo, e-mail or report,
 11 is there any document that you can think of that
 12 would refresh your recollection of the July 17, 2013
 13 session that you have been testifying about?
 14 **A.** I can't think of any.
 15 MR. THOMPSON: Let's go off the record.
 16 (Whereupon, a luncheon recess was taken.)
 17 MR. THOMPSON: Back on the record.
 18 BY MR. THOMPSON:
 19 **Q.** You have been handed another exhibit
 20 binder. I am going to ask you to turn to Exhibit
 21 13?
 22 MR. THOMPSON: For the record, it's Bates
 23 Number Apollo 109332 to 34, and it attaches an
 24 unBates numbered spreadsheet or two spreadsheets.
 25 **Q.** I will be asking you some questions not

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1 instructing you not to answer.
 2 MR. THOMPSON: Right now I am just asking
 3 whether he believes it's a reference to a prior
 4 meeting.
 5 MR. KEHOE: It's the same thing. We are
 6 talking about an e-mail. We are talking about a
 7 common interest and we are asking questions about
 8 this, so it's covered by the privilege. So I am to
 9 going to object and instruct him not to answer?
 10 **Q.** Do you intend to follow that instructions?
 11 **A.** I think I have to. Yes.
 12 **Q.** Let's look at the first spreadsheet. I
 13 guess there is actually only one spreadsheet
 14 attached to the exhibit. Let's look at the
 15 spreadsheet.
 16 So this spreadsheet has different columns
 17 to it. Is it the case that the information set
 18 forth in all of the columns, except for the
 19 expense-classification column, was taken from the
 20 earlier spreadsheet that Paul Weiss had provided to
 21 you?
 22 MR. KEHOE: If you are going to ask him
 23 questions about things he transmitted pursuant to
 24 the common-interest privilege, I am going to
 25 instruct him not to answer any and all questions

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1 about individual expenses, but about the format of
 2 the spreadsheet themselves. Take a moment and let
 3 me know when you are ready to respond to questions.
 4 **A.** Okay.
 5 MR. HUNUSKI: You just want him to focus on
 6 the spreadsheet or on that form.
 7 MR. THOMPSON: On the form, not the
 8 particular expense.
 9 MR. HANUSIK: Because I just noticed
 10 there's I don't know how many pages, but 2500 some
 11 odd spreadsheets.
 12 **Q.** Mr. McGorty, the e-mail includes your
 13 e-mail to Susan Maisel on July 19, 2013 at 10:04
 14 p.m., and you indicated, "Susan, pursuant to our
 15 common interest, attached is a draft spreadsheet
 16 reflecting updates that we made during and following
 17 our meeting on Wednesday. Hopefully, we can speak
 18 more soon about any additional assistance our client
 19 can provide."
 20 So I will represent to you that July 19 was
 21 a Friday. Do you believe that your reference to the
 22 meeting last Wednesday was the meeting that you
 23 would have had with or at Paul Weiss on July 17th?
 24 MR. KEHOE: I am going to object to this.
 25 This is all common-interest communications, so I am

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1 pursuant to that.
 2 MR. THOMPSON: Okay. So that's clear on
 3 the record, I did read the Judge's order into the
 4 record previously, where he expressly said to ask
 5 questions about common interest during this time
 6 period.
 7 MR. KEHOE: That's not a question about the
 8 common interest. It's a question about the document
 9 and the context of the document that he either got
 10 and sent or received. So it's not about the common
 11 interest, it's about the document. That's what your
 12 question was.
 13 MR. THOMPSON: Well, your earlier
 14 instruction was to prevent him from answering
 15 questions about whether the e-mail followed up on a
 16 meeting two days earlier?
 17 MR. KEHOE: The e-mail is quite clear. In
 18 the e-mail he is talking about communications
 19 pursuant to the common-interest privilege. That's
 20 what he is doing, but you are asking him questions
 21 about the e-mail not about this document, which all
 22 goes to the common-interest privilege.
 23 MR. THOMPSON: As the Judge's order
 24 indicated, if there are instructions not to answer
 25 questions, we can address that with the Judge.

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1 For the record, I will ask the questions
2 and you can object if you would like to. We don't
3 need to have a extended colloquy each time.
4 MR. KEHOE: You don't need to ask the
5 questions. Well, you can ask the question. Go
6 ahead.
7 Q. Did Crowell and Mr. Rashid provide the
8 information that is set forth in the expense
9 classification column of this spreadsheet?
10 MR. KEHOE: The same objection.
11 A. I can't answer about the spreadsheet.
12 Q. And information in that column was not
13 provided by Paul Weiss or Apollo, was it?
14 MR. KEHOE: The same objection.
15 A. I can't answer the question.
16 Q. What does the designation "personal" in the
17 expense classification column of the spreadsheet
18 denote?
19 MR. KEHOE: The same objection.
20 A. The same answer.
21 Q. What does the designation "business" in
22 that expense classification column denote?
23 A. The same answer.
24 MR. KEHOE: The same objection.
25 Q. There is another classification "taxi/

1 point, during the end of July timeframe.
2 MR. HANUSIK: Are you instructing him not
3 to answer?
4 MR. KEHOE: Therefore, I am going to
5 instruct you not to answer.
6 Q. Do you believe that your transmission of
7 that spreadsheet was subject to the protections of
8 Rule 408 of the Federal Rules of Civil Procedure.
9 MR. KEHOE: Just thinking out the
10 objection. Putting aside the document, but with
11 regard to your prior question about common interest,
12 we withdraw that objection and you can answer that
13 question.
14 MR. THOMPSON: I am sorry, now I am
15 confused.
16 MR. KEHOE: I was rethinking my objection
17 to the prior question, when he transmitted this, did
18 he believe this was pursuant to the common interest.
19 That, I think I withdraw that objection and allow
20 him to answer.
21 MR. THOMPSON: I am not sure that was the
22 last prior question, so maybe we need to have the
23 record read back.
24 (Record read by the Reporter.)
25 MR. KEHOE: If you are asking what his

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1 cab," what does that denote in the expense
2 classification column?
3 MR. KEHOE: The same objection.
4 A. The same answer.
5 Q. There is a designation of "personal
6 (Prev.)paid back." What does that denote?
7 MR. KEHOE: The same objection.
8 A. The same answer.
9 Q. If you go to the second page of the
10 spreadsheet. There is a entry in yellow above, two-
11 thirds of the way down the page. In the "expense"
12 classification column there is a reference to "check
13 e-mail." What does that denote?
14 MR. KEHOE: The same objection.
15 A. The same answer.
16 Q. Back to your e-mail. The subject line says
17 "common interest, privileged document." Is it
18 correct, that you did not believe that this was a
19 settlement of the document?
20 MR. KEHOE: The same objection.
21 A. The same answer.
22 Q. Or refusal to answer, correct?
23 MR. KEHOE: Yes, when I say "same
24 objection," I mean, the same objection to the
25 implication of common-interest privilege, at this

1 belief was, you can ask him what his belief is, I
2 will withdraw that objection.
3 MR. THOMPSON: I am asking what I asked
4 him. I am not asking him those questions.
5 MR. KEHOE: That's fine. The objection
6 stands.
7 MR. THOMPSON: Now, I can't remember
8 whether I got an answer or an instruction to -- I am
9 sure I got an instruction, but I don't remember the
10 witness actually said that he was following it.
11 With respect to question about Rule 408,
12 can you read that back into the record.
13 (Record read by the Reporter as follows:
14 Question: Do you believe that your transmission of
15 that spreadsheet was subject to the protections of
16 Rule 408 of the Federal Rules of Civil Procedure?)
17 Q. Are you following the instruction not to
18 answer that question, Mr. McGorty?
19 MR. KEHOE: I withdraw the objection on
20 that. You can answer the question.
21 THE WITNESS: Can you read that again?
22 MR. THOMPSON: Are you also withdrawing the
23 instruction with respect to the prior question?
24 MR. KEHOE: No, this question.
25 (Question read by the Reporter.)

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<p>1 A. Yes, I do believe that.</p> <p>2 Q. Why didn't you mark -- you did mark the</p> <p>3 communication as common-interest privileged in the</p> <p>4 actual spreadsheet. There are a number of markings:</p> <p>5 "Draft attorney work product," "joint defense</p> <p>6 privilege" and "confidential." Why didn't you</p> <p>7 include Rule 408?</p> <p>8 MR. KEHOE: You are pointing to the bottom</p> <p>9 of the page in a spreadsheet that is part of Exhibit</p> <p>10 13 that says: "Draft attorney work product," "joint</p> <p>11 defense privilege," "confidential," is that what you</p> <p>12 are referring to?</p> <p>13 MR. THOMPSON: Yes.</p> <p>14 Q. So you put all of these markings on the</p> <p>15 document and on your cover e-mail. If you believe</p> <p>16 your transmission was subject to Rule 408, why</p> <p>17 didn't you reference Rule 408 as well?</p> <p>18 A. I think this entire -- I don't want to</p> <p>19 overstep the question, but the entire project was in</p> <p>20 furtherance of resolving issues settling any</p> <p>21 concerns that Apollo had against Mr. Rashid in</p> <p>22 helping them to settle their concerns that they had</p> <p>23 with the SEC or the basis he had with them, I should</p> <p>24 say. So I can tell you that I think all of this was</p> <p>25 in furtherance of that settlement effort, but every</p>	<p>1 THE WITNESS: I didn't, no.</p> <p>2 MR. HANUSIK: Because you keep representing</p> <p>3 that he did.</p> <p>4 MR. THOMPSON: Let me ask that question.</p> <p>5 MR. HANUSIK: Somebody must have. I don't</p> <p>6 think we have established that.</p> <p>7 Q. Who put the footer on the spreadsheet?</p> <p>8 A. I am not certain. I would imagine it was</p> <p>9 Ms. Kotwani that put it on, K O T W A N I.</p> <p>10 Q. She was working under your supervision?</p> <p>11 A. Correct.</p> <p>12 Q. So this was Crowell designating this</p> <p>13 document as "attorney work product," "joint defense</p> <p>14 privilege" and "confidential," correct?</p> <p>15 A. I think that's fair.</p> <p>16 Q. So with 3 different assertions of some type</p> <p>17 of privilege, why didn't you put subject to Rule</p> <p>18 408, if that's what you believed at the time?</p> <p>19 A. You asked me this earlier. I didn't think</p> <p>20 of it exclusively as a settlement negotiation. I</p> <p>21 think it is -- I thought that was what we were</p> <p>22 doing, but I didn't feel it was necessary to add</p> <p>23 that language here to get that protection. I still</p> <p>24 don't.</p> <p>25 Q. In your subject line on your e-mail you put</p>
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<p>1 communication and every telephone conversation was</p> <p>2 not labeled as such.</p> <p>3 Why I didn't put those words in furtherance</p> <p>4 of this? Some of these words, I don't think are</p> <p>5 necessary either. This is just a standard header I</p> <p>6 put, and I put a footer on the bottom that I thought</p> <p>7 covered the protection of the communication. So</p> <p>8 there are other bases for it as well, I believe.</p> <p>9 Q. Which words on the footer do you believe</p> <p>10 were not necessary?</p> <p>11 A. Well, I mean it is attorney work product.</p> <p>12 It is a joint defense privilege. They said it's a</p> <p>13 common-interest privilege. I don't know if the word</p> <p>14 "confidential" also has been required. It could be.</p> <p>15 It depends on the perspective. I think the word</p> <p>16 confidential adds something to it that may not be</p> <p>17 necessary, the same way the confidentiality</p> <p>18 agreement from Paul Weiss to me did not really add</p> <p>19 any protection, but if they wanted it, they could</p> <p>20 have it.</p> <p>21 Q. So you put 3 different designations of some</p> <p>22 type of privilege --</p> <p>23 MR. HANUSIK: Can we just clarify, I think</p> <p>24 you will allow him to answer this question: Did you</p> <p>25 put these footers on this document?</p>	<p>1 "common-interest privileged document." Why didn't</p> <p>2 you also put subject to Rule 408?</p> <p>3 A. For no particular reason.</p> <p>4 Q. You never discussed Rule 408 with Paul</p> <p>5 Weiss in connection with this expense review; is</p> <p>6 that correct?</p> <p>7 MR. KEHOE: If we are talking about</p> <p>8 conversations prior to August the 1st, objection.</p> <p>9 If it's after that, you can answer.</p> <p>10 A. I don't know.</p> <p>11 Q. I think you previously indicated that you</p> <p>12 did not. Now you are saying that you don't know.</p> <p>13 MR. KEHOE: It's asked and answered.</p> <p>14 A. I don't know with respect to the time</p> <p>15 clarification. I don't know.</p> <p>16 Q. Okay. Well, asked and answered is not a</p> <p>17 basis to instruct the witness not answer, so you can</p> <p>18 answer it again.</p> <p>19 MR. KEHOE: Just not my objection.</p> <p>20 Q. Do you not know or do you believe that you</p> <p>21 did not have discussions with Paul Weiss about Rule</p> <p>22 408. I am asking whether you have no recollection</p> <p>23 or whether you know that you had no discussions.</p> <p>24 MR. KEHOE: You just asked him two</p> <p>25 questions. I am going to object to the compound</p>

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<p>1 question. You can ask one question at a time. 2 Q. I am trying to understand your testimony. 3 A. Okay. 4 MR. KEHOE: Object to the preface. Just 5 ask questions, please. 6 MR. THOMPSON: Greg, please don't keep 7 speechified, Greg. I am going to cut it off pretty 8 soon. 9 MR. KEHOE: That's fine, you can do 10 anything you want, but do not give a speech prior to 11 asking the witness a question to lay your argument. 12 MR. THOMPSON: It's not a speech, and I 13 appreciate it if you would be quiet and stop 14 interjecting. 15 MR. KEHOE: It is. I will not stop 16 interjecting if you continue to ask him improper 17 questions. 18 MR. THOMPSON: That is not an improper 19 question, and you know it. 20 MR. KEHOE: Don't interrupt me. 21 MR. THOMPSON: Let's go on. Let's ask new 22 questions. 23 MR. KEHOE: Good. 24 Q. Did you or did you not have discussions 25 with Paul Weiss about the extent to which Rule 408</p>	<p>1 A. Asking me as I sit here today, yes, I think 2 it was. 3 Q. I am going to ask you to turn to Exhibit 14 4 in your binder. Exhibit 14 is an e-mail string 5 bearing Bates Numbers Apollo 43994 to 98. The last 6 e-mail and string on the first page is a July 25, 7 2013, 5:45 e-mail, from Susan Maisel to Dan Zelenko, 8 copied to you, Mr. McGorty. 9 Mr. Zelenko's July 23rd e-mail at 4:55 to 10 Ms. Maisel is on page 97. It says he wanted to find 11 the time this week for Ali Rashid to come over to 12 review his calendar and e-mails at Paul Weiss. 13 Had Paul Weiss offered to make Mr. Rashid's 14 calendars and e-mails available to him for review in 15 connection with the expense review? 16 MR. KEHOE: Objection. This is the July 17 13, 2013 time frame covered by the common-interest 18 privilege. 19 A. I can't answer it then. 20 Q. Ms. Maisel's July 25th e-mail, on the top 21 of page 95, asks: "Can we get a revamped copy of 22 your chart that groups expenses by trip?" 23 Do you see that? 24 A. I see that. 25 Q. Do you understand what that is in reference</p>
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<p>1 applied to communications that you were having with 2 Paul Weiss during the expense review? 3 MR. KEHOE: My objection is the time frame. 4 Anything post-August 1st he can answer. Prior to 5 that, it's a privileged objection; common- interest 6 objection. 7 A. And I believe with the time limitation 8 placed by counsel, the answer I gave earlier, which 9 is I don't believe I had those conversations with 10 Paul Weiss under the time clarification proposed by 11 counsel. I don't have a recollection of ever having 12 a conversation with Paul Weiss during that time 13 frame. 14 Q. Just so the record is absolutely clear, are 15 you declining to answer whether you have a 16 recollection of such conversations prior to August 1 17 of 2013? 18 A. I think I have to. 19 MR. HANUSIK: At the direction of counsel. 20 A. I think I have to, so yes. 21 Q. So is it your testimony that Exhibit 13 and 22 specifically your e-mail on the attached 23 spreadsheet, was protected by common-interest 24 privilege, joint defense privilege and Rule 408 of 25 the Federal Rules of Evidence?</p>	<p>1 to? 2 MR. KEHOE: The same objection. I instruct 3 the witness not no answer. 4 A. Therefore, I can't answer it. 5 Q. Have there been any discussions of 6 developing a revised chart that grouped expenses by 7 trip? 8 MR. KEHOE: The same objection. The same 9 admonition. 10 A. The same answer. 11 Q. Mr. Zelenko's e-mail of July 25th at 5:36 12 p.m. says: "Susan, Monday works for us. Can we say 13 10 a.m.? We are working on the chart and should 14 have something for you by tomorrow morning." 15 Now, you are not shown as copied on this 16 particular e-mail, but do you have an understanding 17 of what the reference to the chart -- 18 MR. HANUSIK: Mr. McGorty is copied on the 19 e-mail. 20 MR. THOMPSON: He is? 21 MR. HANUSIK: Yes. 22 A. I am in there. 23 MR HANUSIK: He is CC's, the last entry. 24 Q. So you are copied on the e-mail. Do you 25 have an understanding of the reference to the chart?</p>

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<p>1 MR. KEHOE: The objection. The same 2 instruction not to answer. 3 A. The same answer. 4 Q. Is that the spreadsheet that you had been 5 working on? 6 MR. KEHOE: The same objection. The same 7 instructions. The same admonition. 8 Q. Was there a meeting between Crowell 9 personnel and -- Crowell personnel and Paul Weiss on 10 Monday, July 29, 2013? 11 A. I don't remember if there was one that day. 12 Q. Do you recall being present at such a 13 meeting in that time period? 14 A. Meaning the last week in July? Not 15 specifically. 16 Q. Turn to Exhibit 15. Exhibit 15 bears Bates 17 Numbers Apollo 109 through 3940. And attaches what 18 appear to be two spreadsheets, and as with the prior 19 spreadsheet, Mr. McGorty, I don't plan to ask you 20 about -- 21 MR. KEHOE: I don't mean to interrupt, but 22 are there two spreadsheets or just one? 23 MR. THOMPSON: I believe there is just one, 24 it's formatted just straight chronologically and 25 another that is formatted by trip. Is that not</p>	<p>1 MR. THOMPSON: And the witness would follow 2 that instruction. 3 MR. KEHOE: I would hope he would. 4 A. Yes. 5 MR. THOMPSON: There do appear to be some 6 changes in the version of the spreadsheet that is 7 organized chronologically in the last version that 8 was sent. I would ask questions about those 9 changes. I mean, I take it that there would be an 10 instruction not answer those questions as well? 11 MR. KEHOE: You are correct. 12 Q. And you would follow that instruction? 13 A. Yes, sir. 14 MR. THOMPSON: Likewise, I take it if I 15 asked about discussions with Paul Weiss about the 16 spreadsheets attached to the e-mail that is Exhibit 17 15, there would be an instruction not to answer 18 those questions? 19 MR. KEHOE: There would. 20 Q. And you would follow that instruction, Mr. 21 McGorty? 22 A. Yes. 23 Q. I believe you did not recall specifically 24 going to a meeting at Paul Weiss on July 29th, but 25 did generally recall some type of meeting in that</p>
<p>133</p> <p>1 correct? 2 MR. KEHOE: No, no, I didn't catch the 3 distinction about the format. 4 My apologies. 5 MR. THOMPSON: No problem. 6 Q. So as with the prior spreadsheets, I would 7 ask questions with respect to the source of the 8 information provided in the various columns of the 9 spreadsheets. I take it that there would be an 10 instruction not to answer those questions. 11 MR. KEHOE: Yes. 12 Q. Can we stipulate that the questions would 13 have been asked and that there is an instruction 14 that has been given and that you will follow the 15 instruction? 16 A. Yes, sir. 17 MR. KEHOE: We can stipulate that the 18 questions similar to what you asked on the 19 spreadsheet will be asked here and I would instruct 20 the witness not to answer, in a similar fashion. 21 MR. THOMPSON: Likewise, if I ask the 22 purpose of the trip spreadsheet, the one that 23 appears to be trips by -- or expenses by trip, I 24 take it there would be an instruction? 25 MR. KEHOE: Yes, similar instructions.</p>	<p>135</p> <p>1 timeframe, am I correct? 2 A. I didn't recall during that time period. 3 As I said earlier, I remember going to Paul Weiss at 4 some point. That may have been the earlier meeting 5 we talked about this morning. I can't pin it down, 6 but it was certainly in the early part of the case. 7 Which I would say was July. I am just not certain 8 which one I am remembering in my head. It may have 9 been the earlier one that month. 10 Q. Okay. Do you recall any discussion at a 11 meeting with Paul Weiss, at any time prior to August 12 1st of 2013, regarding subject of common interest? 13 A. That was covered by the common interest or 14 the topic of whether the conversations were 15 protected by common interest? 16 Q. The latter. 17 A. I don't recall having a conversation like 18 that, no. 19 Q. Do you recall at any time prior to August 20 1st of 2013, having any discussion with anyone at 21 Paul Weiss about the extent to which communications 22 were subject to a joint defense privilege? 23 A. I take your question to mean conversations 24 about that subject matter, as opposed to 25 communications that are protected by it or marked as</p>

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<p>1 such.</p> <p>2 Q. That's correct.</p> <p>3 A. I would say no.</p> <p>4 Q. So the record is clear. You don't recall</p> <p>5 any discussion about the subject matter of whether</p> <p>6 communications were protected by joint defense</p> <p>7 privilege?</p> <p>8 A. That's correct.</p> <p>9 Q. Prior to August 1, 2013, do you recall any</p> <p>10 discussions with Paul Weiss at any time as to</p> <p>11 whether communications were protected or were</p> <p>12 subject to Rule 408 of the Federal Rules of</p> <p>13 Evidence?</p> <p>14 A. No, not specifically, no. I don't recall I</p> <p>15 should say.</p> <p>16 Q. Again, prior to August 1st of 2013, do you</p> <p>17 recall any discussions at any time with anyone at</p> <p>18 Paul Weiss, about possible legal claims that Apollo</p> <p>19 might assert against Mr. Rashid?</p> <p>20 A. I am going to answer that question yes, but</p> <p>21 in very general terms. The concern that Paul Weiss</p> <p>22 itself had, in my view, gave rise to potential</p> <p>23 claims. So the conversations I recall would have</p> <p>24 included discussions of claims that they could have</p> <p>25 against Mr. Rashid, in a general sense.</p>	<p>1 could assert against Mr. Rashid?</p> <p>2 A. I am having trouble distinguishing the</p> <p>3 timeframe as well. I am fairly certain that at some</p> <p>4 point in time there was a conversation about the</p> <p>5 seriousness of the allegations of the conduct in the</p> <p>6 form of a discussion of a potential legal action</p> <p>7 that Apollo could take against Mr. Rashid. I do not</p> <p>8 believe it was specific to, we could sue Mr. Rashid</p> <p>9 for X or Y, but it was clearly Apollo, at some point</p> <p>10 during our conversations with Paul Weiss, Apollo via</p> <p>11 Paul Weiss, asserting the fact that they could take</p> <p>12 legal action against Mr. Rashid for what they</p> <p>13 perceived to be the conduct.</p> <p>14 I just don't think it was specific as to</p> <p>15 embezzlement or something labeled like that.</p> <p>16 Q. Is this a specific conversation that you</p> <p>17 are recalling?</p> <p>18 A. Meaning time and who was present? No.</p> <p>19 Q. Meaning timeframe.</p> <p>20 A. If you would accept the timeframe being</p> <p>21 from the time we began the representation through</p> <p>22 September, October then, yes, in that timeframe we</p> <p>23 would have had those conversations, but I don't</p> <p>24 remember.</p> <p>25 Q. You don't recall whether that was before or</p>
<p>137</p> <p>1 Q. When you say would have in a general sense,</p> <p>2 I need to probe that.</p> <p>3 A. Sure.</p> <p>4 Q. Do you actually recall any discussion, as</p> <p>5 opposed so thinking something in your mind?</p> <p>6 A. I recall conversations with Paul Weiss.</p> <p>7 Q. Yes, but do you recall discussions with</p> <p>8 Paul Weiss about potential claims that Apollo could</p> <p>9 assert against Mr. Rashid?</p> <p>10 A. My confusion is how you want me to define</p> <p>11 "potential claims."</p> <p>12 Q. Potentially legal claims. Do you recall a</p> <p>13 discussion of Apollo saying we could sue you</p> <p>14 embezzlement or something else like that?</p> <p>15 A. I think the subject matter was discussed in</p> <p>16 a general sense, not with specificity as to what</p> <p>17 potential claims could be against him, like what the</p> <p>18 nature of a potential lawsuit would be about, just</p> <p>19 their concerns about his conduct that could</p> <p>20 inherently give rise to potential legal claims.</p> <p>21 Q. Again, we need to drill down on this.</p> <p>22 A. Okay.</p> <p>23 Q. Was there a discussion about the conduct</p> <p>24 and if that was the end of it, or was there also a</p> <p>25 discussion about potential legal claims that Apollo</p>	<p>139</p> <p>1 after?</p> <p>2 A. Before or after August 1, for example?</p> <p>3 Q. Right.</p> <p>4 A. I am sure that in some form those</p> <p>5 conversations extended past August 1st, but I don't</p> <p>6 know for sure beyond that.</p> <p>7 Q. And who are the participants in this</p> <p>8 conversation?</p> <p>9 A. Again, not having a recollection of the</p> <p>10 specific conversation, it is hard to say. I would</p> <p>11 imagine I would have been present, obviously,</p> <p>12 someone from Paul Weiss, possibly Mr. Finzi or Mr.</p> <p>13 Ricciardi or Mr. -- I am forgetting the name of the</p> <p>14 other person who was the other side with Paul Weiss,</p> <p>15 Ehrlich, maybe. I apologize. I don't remember.</p> <p>16 And on our side, Mr. Zelenko may be part of those</p> <p>17 calls or conversation, I don't remember as well. I</p> <p>18 just can't pin it to a specific date.</p> <p>19 Q. So you don't know basically who would have</p> <p>20 been party to those conversations?</p> <p>21 MR. KEHOE: Objection to the form.</p> <p>22 A. Some combination of those people would</p> <p>23 have. I just can't tell you who specifically was</p> <p>24 part of the conversations where -- conversation or</p> <p>25 conversations where I remember this general</p>

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<p>1 conversation about Mr. Rashid's potential civil 2 exposure vis-a-vis Apollo. 3 Q. So you can't say who at Paul Weiss 4 participated in this general conversation that you 5 recall? 6 MR. KEHOE: Objection to form. Asked and 7 answered. You can answer. 8 A. Or who from our side, other than me because 9 I would have been there, if I remember the 10 conversation. 11 Q. Is there some file memo or other writing 12 that memorializes Paul Weiss generally saying 13 something to the effect that Apollo could assert 14 claims against Mr. Rashid? 15 A. I don't know. 16 Q. You have not seen one? 17 A. No, I have not seen one. I have not seen 18 one certainly recently in anticipation of this. 19 Maybe back in the day if there was one I would have 20 seen it, but I don't recall. 21 Q. So after this conversation that you can't 22 recall specifically, did you start marking 23 communications with Paul Weiss as subject to Rule 24 408 of the Federal Rules of Evidence? 25 A. Let me be clear, I don't think that</p>	<p>1 Rashid. 2 Q. So recognizing that you only have a general 3 recollection, but do you have any recollection of 4 what the claims were that Apollo could have asserted 5 against Rashid? 6 A. I don't. I don't. I would add that, 7 again -- I will answer your question. I don't recall 8 the specific claims that they could have asserted 9 against Mr. Rashid. 10 Q. And are you certain that there was some 11 discussion of legal claims as opposed to discussion 12 of Rashid's conduct being a basis for his 13 termination from the firm? 14 A. I believe so. I am glad you asked that 15 question because, again, from the beginning, the 16 focal point was for Mr. Rashid to keep his job. I 17 believe there was a separate notion of there being a 18 concern about potential legal action as well, I 19 believe that. 20 Q. You say notion. You believe this notion 21 was verbalized in some sense and your recollection 22 is a very general one. You don't recall who. You 23 don't recall when. You don't recall what claims 24 would have been asserted? 25 MR. KEHOE: Objection to the form.</p>
<p>141</p> <p>1 potential designation arose from that conversation. 2 I think from day one we were working to settle 3 Apollo's claims against Mr. Rashid. 4 I remember -- if you are talking about the 5 specific legal claims as opposed to the claims they 6 have in the context of his employment, that 7 conversation happened at some point. I don't 8 remember when it happened, but my belief that we 9 were trying to settle the concern Apollo had with 10 him was from the day one when I got on this case. 11 Q. I appreciate the explanation, but the 12 question was much simpler. It was simply after this 13 conversation that you generally recall, did you 14 start marking your communications with Paul Weiss as 15 subject to Rule 408 of the Federal Rules of 16 Evidence? 17 A. No. 18 Q. That's because you didn't think it was 19 necessary or what? 20 MR. KEHOE: Objection to the form. 21 A. The answer to that question is the answer I 22 just gave you, which is I didn't think that my 23 belief that was to settle these claims arose from a 24 conversation with Paul Weiss about the specific 25 legal action that they could take against Mr.</p>	<p>143</p> <p>1 Q. Is that correct? 2 A. I believe being concerned during this time 3 period that -- 4 Q. I am not asking about your concern. 5 MR. KEHOE: Excuse me? 6 Q. I am sorry, I did interrupt you. Go ahead. 7 A. I believe that during this time period I 8 had concerns about legal action that Apollo could 9 take against Mr. Rashid along side employment 10 concerns that we had on his behalf. I do believe 11 that at some point there was some conversation 12 between our side and Apollo, meaning someone from 13 Crowell and Apollo, that discussed that in some 14 general terms. I just don't remember when it was or 15 the details of it, but I think that was not 16 something that just existed in my mind, I believe, 17 that was an actual concern. 18 Q. What claims did you think Apollo could 19 assert against Mr. Rashid? 20 A. I don't know if I had specific concerns -- 21 a specific statutory action in mind. I knew what 22 the conduct was believed to be from Apollo's 23 perspective, as shared with me by Paul Weiss and not 24 protected client communications. 25 Q. Was there ever any discussion with Paul</p>

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1 Weiss that you can recall of potential claims that
2 Mr. Rashid might assert against Apollo?
3 **A.** I don't recall that.
4 **Q.** You don't believe there were such
5 discussions?
6 **A.** I just don't recall either way.
7 **Q.** Have you now testified to everything you
8 can recall about any discussion with Paul Weiss
9 about potential claims, legal claims, that Apollo
10 potentially could assert against Mr. Rashid?
11 MR. KEHOE: Object to the form of that.
12 **A.** To the best of my ability.
13 **Q.** Is there anything that you can think of,
14 any document or anything else that you can think of
15 that would refresh your recollection?
16 MR. KEHOE: Objection to the form.
17 **A.** None that I can think of.
18 **Q.** I apologize if I asked this previously. I
19 honestly can't remember if I asked it previously.
20 You can object to it. I apologize. With respect to
21 looking at Exhibit 15, for example, in the
22 spreadsheets in the footer, "draft attorney
23 product," "joint defense privilege" "confidential,"
24 do you recall ever having discussions with anyone at
25 Paul Weiss about that footer?

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1 on it. Do you see that at the bottom of the first
2 page, Mr. McGorty?
3 **A.** I do see that.
4 **Q.** Do you know what that refers to?
5 **A.** I do not.
6 **Q.** Mr. Barzede's 5:35 p.m. e-mail attaches a
7 file titled "Missing Expense Items," and it goes on.
8 Do you have an understanding of what that
9 represents?
10 **A.** I do not.
11 **Q.** You can set this aside. Let's go to
12 Exhibit 17.
13 MR. THOMPSON: Exhibit 17 is Bates numbered
14 Apollo 109342 to 47. It also has an attachment
15 which appears to be a spreadsheet or some excerpt
16 from a spreadsheet. There is another Bates number
17 Apollo 109848 that attaches what appears to be
18 another spreadsheet.
19 **Q.** If you look at it, working backwards in the
20 e-mail string, July 30th 2013, at 10:34 p.m., you
21 wrote to Ms. Barzede, referring to your
22 availability for a call the following morning. The
23 ensuing e-mails appear to be setting up such a call.
24 Would you agree that that is an accurate
25 characterization of that document?

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1 **A.** Other than the fact that it was included in
2 what we sent them, no.
3 **Q.** I am asking about discussions. I am not
4 asking about the fact that it appeared on a
5 document.
6 **A.** There were no discussions about it. They
7 never -- there was who discussion about it.
8 **Q.** Prior to August 1 of 2013, did Paul Weiss
9 ever indicate that it disagreed with the privilege
10 notations you saw in Exhibit 15 in the footer?
11 **A.** No, not that I recall.
12 **Q.** Did Paul Weiss ever indicate that it agreed
13 with that notation?
14 **A.** No, not that I recall.
15 **Q.** Okay. Please turn to Exhibit 16 in your
16 binder.
17 MR. THOMPSON: For the record, Exhibit 16
18 is Bates numbered Apollo 43989 to 91. It attaches
19 what appears to be a spreadsheet?
20 **A.** Okay.
21 **Q.** And the last e-mail in this string is from
22 Sipoura Barzede at Paul Weiss to Namirata Kotwani
23 at Crowell, dated July 29, 2013, at 5:35 p.m. Ms.
24 Kotwani's e-mail of July 29th at 5:16 requests a
25 copy of the spreadsheet with the additional expenses

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1 **A.** That's seems correct.
2 **Q.** If you go back to your entries in Exhibit
3 1A on the billing records, you have two entries for
4 two calls with Mr. Ricciardi and Ms. Barzede on
5 July 31st. Do you see those entries?
6 **A.** Yes.
7 **Q.** Do you have any recollection of such calls?
8 **A.** I do not.
9 **Q.** So you have no recollection of what was
10 discussed?
11 **A.** Correct.
12 **Q.** If I asked if you had any recollection of
13 any common-interest understanding being discussed, I
14 take it you would have no such recollections?
15 **A.** No, I don't have a recollection of anything
16 that was discussed.
17 **Q.** Do you know whether someone at Crowell
18 prepared a memo regarding the calls on that date?
19 **A.** I do not.
20 **Q.** Are you aware of any document that might
21 refresh your recollection as to a discussion of
22 those calls?
23 **A.** No.
24 **Q.** Okay. So the print is very small. I have
25 been struggling with it. Let's look at the

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<p>1 spreadsheet that is Exhibit 17 that I attached to 2 the document Bates Number Apollo 109348. I believe, 3 that's the next spreadsheet?</p> <p>4 MR. HUNUSKI: The non-folder spreadsheet?</p> <p>5 MR. THOMPSON: Yes, sir.</p> <p>6 A. The non-folder.</p> <p>7 Q. In the far right hand side of the page 8 there is a column designated, "Added by BDO." What 9 does that mean?</p> <p>10 MR. KEHOE: Objection, common-interest privilege.</p> <p>12 MR. HANUSIK: Can I ask a question?</p> <p>13 MR. THOMPSON: Yes.</p> <p>14 MR. HANUSIK: Is this a good printout? It 15 appears to be cut off.</p> <p>16 MR. THOMPSON: I should say that some of 17 the exhibits -- not all of the -- I am sorry, some 18 of these spreadsheets when we copied them, some of 19 the text was cut off. I should be having delivered 20 here sometime this afternoon versions that are not 21 cut off and I will distribute those for substitution.</p> <p>23 MR. HANUSIK: Okay.</p> <p>24 Q. Looking in that same column, added by BDO, 25 Mr. McGorty, some of the entries say "not included</p>	<p>1 received another wave of previously not included 2 expenses. I don't remember anything beyond that. 3 That could be what that is, it may not be. I don't 4 know.</p> <p>5 Q. We are going to go to binder number 3.</p> <p>6 A. Yes, sir. The first one is 18.</p> <p>7 Q. Actually look at Exhibit 19 first.</p> <p>8 A. Okay.</p> <p>9 Q. So we are on Exhibit 19 now.</p> <p>10 MR. THOMPSON: For the record, it is Bates numbered Apollo 109355 through 57, and it attaches what appears to be a spreadsheet, and this is also one of the spreadsheets where the copying job partially cut off some of the numbering on the far left-hand side of the spreadsheet. As previously indicated, we do have better copies coming and will be made available to counsel for substitution in their binders.</p> <p>19 Q. Mr. McGorty, let's look at your e-mail from 20 August 1, 2013 at 11:33 a.m. to Ms. Barzehed. You 21 indicate: "Sipoura, attached is the draft 22 spreadsheet showing the modifications and edits 23 based on our session last Monday in your office when 24 Mr. Rashid was able to review the calendar and 25 e-mail."</p>
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<p>1 in Ali Rashid," although that's a portion that your 2 counsel has pointed at that was cut off. Do you 3 have an understanding of what that denotes?</p> <p>4 MR. KEHOE: The same objection.</p> <p>5 A. Based on the direction, I can't answer.</p> <p>6 MR. HANUSIK: I would add it's impossible 7 to answer with the text cut off. You can represent 8 what the rest of it says.</p> <p>9 Is it your direction not to answer?</p> <p>10 MR. KEHOE: Correct.</p> <p>11 Q. Do you believe that these were expenses 12 that had not been previously included in the 13 spreadsheet that Ms. Kotwani had transmitted to Paul 14 Weiss on July 26th?</p> <p>15 MR. KEHOE: If your answer is it involves 16 matters implicated as a common-interest privilege, I 17 instruct you not to answer.</p> <p>18 A. Based on that direction, I won't answer.</p> <p>19 Q. Let me just ask generally, do you have a 20 recollection at some point in time that there had 21 been some expenses identified as expenses that were 22 not covered in the earlier spreadsheets that had 23 been transmitted prior to July 26 of 2013?</p> <p>24 A. I think I said earlier that I remember 25 there was an expansion of dates. So I remember we</p>	<p>1 Was it accurate that Mr. Rashid was able to 2 review the calendar and e-mail at that prior Monday?</p> <p>3 MR. KEHOE: Objection, common-interest privilege. I instruct the witness not to answer.</p> <p>5 A. Based on that instructions I can't answer.</p> <p>6 Q. What calendars did Mr. Rashid review?</p> <p>7 MR. KEHOE: The same objection.</p> <p>8 A. The same answer then.</p> <p>9 Q. What e-mails did he review?</p> <p>10 MR. KEHOE: The same objection.</p> <p>11 A. The same answer.</p> <p>12 Q. Just to expedite things, it appears to me 13 that there were some changes in the expense 14 classifications between this spreadsheet that is 15 attached here to Exhibit 19 and the spreadsheets 16 that have been earlier transmitted. I would ask 17 questions about those changes. I assume there would 18 be an instruction not to answer?</p> <p>19 MR. KEHOE: There would.</p> <p>20 Q. I assume, Mr. McGorty, that you would 21 follow that instructions?</p> <p>22 A. Yes.</p> <p>23 MR. HANUSIK: Can we go off the record for 24 a second.</p> <p>25 (Off the record.)</p>

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<p>1 MR. THOMPSON: Back on the record. 2 And likewise I take it, Mr. Kehoe, if I ask 3 questions about the meaning of the column headings 4 and the spreadsheet and the entries in the 5 spreadsheet there would be an instruction not to 6 answer? 7 MR. KEHOE: That's correct. 8 BY MR. THOMPSON: 9 Q. And you would follow that instruction? 10 A. Yes, sir. 11 Q. Let's turn to Exhibit 20. 12 MR. THOMPSON: For the record, Exhibit 20 13 bears Bates Number Apollo 109358 through 63. It is 14 an e-mail string. It appears to end with Mr. 15 McGorty's August 1, 2013, 7:28 p.m. to Ms. Barzede, 16 a copy to Mr. Ricciardi, the subject is: "Request 17 for more information." 18 Q. Do you have that orientation, Mr. McGorty? 19 A. Yes, I do. 20 Q. You wrote: Hi Sipoura, I have answers to a 21 number of the questions which I can send to you 22 tonight. We are presently in a conference room 23 working on trip descriptions, which is time 24 consuming." 25 When you wrote that we are presently in a</p>	<p>1 documents, but certainly, at a minimum, his calendar 2 and trying to figure out what we could definitively 3 document as a particular business expense, and if it 4 was a business expense, where it could be allocated 5 in the Apollo system, like I said earlier. 6 So I don't have a recollection as to why we 7 only had answers at this point for these particular 8 line items, but that's what these answers are. 9 Q. So the line items that are referenced in 10 your e-mail, that refers to the expense 11 spreadsheets? 12 A. Yes, yes. That's the categorization in the 13 spreadsheets. 14 Q. And where you indicate that various items 15 should be business or personal, that was a 16 determination that Crowell and Mr. Rashid were 17 making; correct? 18 MR. KEHOE: Objection to the form. If it 19 involves conversations with Mr. Rashid, I instruct 20 you not to answer. 21 A. What we -- what I shared with Paul Weiss 22 via this e-mail and potentially subsequent documents 23 was our determination, our representation of what we 24 found on documentation to support saying it was a 25 business expense, and if not, everything else was</p>
<p style="text-align: center;">153</p> <p>1 conference room, who was working on the trip 2 descriptions? 3 MR. KEHOE: For the record, there is not a 4 common-interest privilege because prior, earlier 5 that day, is when the e-mail came through at 1:31 6 instructing you that they were not abiding by any 7 such privilege. So to that question, we are not 8 invoking that. 9 A. I don't have an independent recollection of 10 who was present. Contextually, it was probably a 11 combination of Mr. Rashid and Ms. Kotwani. 12 Q. Turning to Exhibit 21, this bears Bates 13 Number Apollo 109364 to 71. It is another e-mail 14 string appearing to end with, Mr. McGorty, your 15 e-mail of August 1st, 8:25 p.m., to Ms. Barzede on 16 the subject of request for more information. You 17 say, "Here are the answers we have thus far." 18 Can you tell me what the questions were and 19 what these were answers to? 20 A. Well, there is really only one question for 21 all of these, which is can we document it to be a 22 business expense? So I believe at the time we were 23 going through the process of reviewing the items and 24 looking at the calendar and reviewing other 25 documents. I don't remember the extent of all the</p>	<p style="text-align: center;">155</p> <p>1 put in the other bucket. 2 Q. Subsequent to this e-mail, do you know 3 whether anyone from Crowell ever transmitted 4 additional changes to in the spreadsheets that have 5 been previously transmitted? 6 A. I don't remember. I thought this process 7 continued past this date in my mind, but I don't 8 remember. 9 Q. Now, let's turn to Exhibit 22. Exhibit 22 10 is Bates number Apollo 42426 to 27. It appears to 11 be an e-mail string that ends with an August 1st, 12 2013, 1:31 p.m., e-mail from Ms. Barzede to Mr. 13 McGorty, with copies to others. 14 Was this one of the documents that you 15 reviewed in preparation for your deposition? 16 A. This one I definitely saw recently. 17 Q. Did this refresh your recollection about 18 the events? 19 A. To some extent. 20 Q. And did you see this e-mail on August 1, 21 2013? 22 A. I assume I did, based on the e-mail header. 23 Q. Did the e-mail come as a surprise to you? 24 A. I don't recall my reaction to the e-mail. 25 Q. Well, given that you thought there was a</p>

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<p>1 common interest, wouldn't it have come as a surprise 2 to you?</p> <p>3 MR. KEHOE: Objection to the form.</p> <p>4 Q. I don't mean to be argumentative.</p> <p>5 A. I understand. I don't mean to be elusive. I don't remember what my reaction was. I think that's a reasonable statement that you just made, but I don't remember receiving or reacting to it.</p> <p>9 Q. Ms. Barzedeh writes, "Glen, Namirata, thank 10 you for the spreadsheets you had provided. We would 11 like to remind you that we are not in a position to 12 enter into a joint defense agreement with your 13 client. We are willing to accept the information 14 you provided on the same basis as the interview we 15 conducted with Ali. The information is considered 16 privileged, however, the privilege belongs to 17 Apollo. Apollo may choose to waive this privilege 18 without Ali's consent and Ali will not have a say in 19 the disclosure of this information if the company 20 chooses to waive the privilege. Thank you, 21 Sipoura."</p> <p>22 So my first question is whether you recall 23 anything having changed from July 31 to August 1st 24 to prompt such an e-mail from Paul Weiss? Was there 25 any change?</p>	<p>1 possibility of a claim being asserted by Apollo 2 against Rashid. Can you say whether that 3 conversation, as you recall, happened before or 4 after you received Ms. Barzedeh's e-mail?</p> <p>5 A. I can't.</p> <p>6 Q. Had Paul Weiss personnel previously told 7 you that Apollo was not in a position to enter into 8 a joint defense agreement with Mr. Rashid?</p> <p>9 A. Prior to this?</p> <p>10 Q. Yes.</p> <p>11 A. I don't recall ever being told that by 12 anyone at Paul Weiss.</p> <p>13 Q. Do you recall anyone else ever being told 14 that?</p> <p>15 A. No.</p> <p>16 Q. Ms. Kotwani was the associate on the case; 17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Did she regularly report to you on her 20 conversations with Paul Weiss' attorneys?</p> <p>21 A. I assume so. I believe so, during this 22 time period.</p> <p>23 Q. Do you believe that she would have informed 24 you had Paul Weiss, prior to this e-mail that we are 25 looking at, indicated that Apollo was not in a</p>
<p>157</p> <p>1 A. I don't recall anything changing.</p> <p>2 Q. So you don't recall any big discussion or 3 Apollo on July 31st saying we are going to sue your 4 client?</p> <p>5 A. Which part of the question do you want me 6 to answer? I don't recall any of that on July 31st.</p> <p>7 Q. That's fine.</p> <p>8 You don't believe that Apollo had told 9 Rashid by this point that he would be terminated; 10 correct?</p> <p>11 MR. KEHOE: Objection to the form.</p> <p>12 Q. Or do you?</p> <p>13 MR. KEHOE: Object to the form.</p> <p>14 A. Again, excluding anything I learned from my 15 client, I don't have a specific recollection of 16 hearing from Paul Weiss that that determination has 17 been made.</p> <p>18 Q. Do you recall hearing it from anyone else?</p> <p>19 A. Or anyone other than my client, which is 20 excluding potential client communications at that 21 time. As I said earlier, I think it was much later 22 than that.</p> <p>23 Q. A little while ago you testified about a 24 general recollection of a discussion with Paul Weiss 25 where there was some reference made to the</p>	<p>159</p> <p>1 position to enter into a joint defense arrangement 2 with your client?</p> <p>3 A. I think so.</p> <p>4 Q. After receiving this e-mail, did you ask 5 her?</p> <p>6 A. I don't recall.</p> <p>7 MR. HANUSIK: Objection.</p> <p>8 Q. To the extent you can answer without 9 getting into attorney work product, can you indicate 10 whether there was any investigation conducted after 11 receipt of this e-mail with respect to prior 12 disclaimers by Paul Weiss of a common interest?</p> <p>13 A. I cannot.</p> <p>14 Q. You cannot answer?</p> <p>15 A. Based on that caveat, no.</p> <p>16 Q. I am not asking the content, but does any 17 internal memo or other document exist at Crowell 18 with respect to any investigation that may have been 19 prompted by the receipt of this e-mail?</p> <p>20 MR. HANUSIK: Objection?</p> <p>21 Q. Again I am not asking the content.</p> <p>22 MR. HANUSIK: Do you know.</p> <p>23 A. I do not know.</p> <p>24 Q. You have not seen such a --</p> <p>25 A. Correct.</p>

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1 **Q.** What is your understanding, going back to
2 the e-mail of Ms. Barzede's reference to the
3 interview we conducted with Ali?
4 **A.** What is my understanding?
5 **Q.** Yes.
6 **A.** I believe the only interview that was ever
7 conducted of Ali was the one that predated our
8 retention, so I assume that is what you mean.
9 **Q.** So to the extent that there was --
10 subsequent to Rashid -- subsequent to your retention
11 there were interactions between Mr. Rashid and
12 Crowell, on the one hand, and Apollo's
13 representatives on the other hand, did Mr. Rashid
14 sometimes provide verbal information in response to
15 questions?
16 **MR. KEHOE:** I am going to object to that
17 and instruct the witness not to answer.
18 **A.** I can't answer that question.
19 **Q.** Did you write back to Ms. Barzede or
20 anyone else at Paul Weiss to dispute what you said
21 in your e-mail?
22 **A.** I don't remember.
23 **Q.** Did you pick up the phone to ask about the
24 e-mail?
25 **A.** I don't remember.

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1 **MR. HANUSIK:** He said that he didn't
2 remember.
3 **A.** I didn't say I didn't, that's my point. I
4 honestly don't remember how I addressed this e-mail
5 externally with Paul Weiss. I can't say I didn't
6 have those conversations, I just don't remember.
7 **Q.** If any pushback occurred, you don't recall
8 any?
9 **A.** If any conversations, regardless of the
10 tenor occurred, I just don't remember.
11 **Q.** After reading Ms. Barzede's e-mail, did
12 you believe that a common legal interest still
13 existed between Rashid and Apollo?
14 **A.** At the time?
15 **Q.** Yes.
16 **A.** I don't recall what I thought about the
17 state of play after this e-mail, to be honest with
18 you. I just don't.
19 **Q.** What do you think about the state of play
20 now?
21 **A.** Based on the instructions from my former
22 client's attorney, my understanding is that there is
23 no dispute that as of this date there wasn't a
24 common legal interest, so I don't disagree with
25 that.

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1 **Q.** Did you contact Mr. Finzi to ask what is
2 going on here?
3 **A.** The same answer. I don't remember.
4 **Q.** You don't remember one way or the other?
5 **A.** I just don't remember.
6 **Q.** Do you know whether Mr. Zelenko or anyone
7 else at Crowell called anyone at Paul Weiss about
8 Ms. Barzede's e-mail?
9 **A.** In the sense that was I informed by someone
10 internally at Crowell about a conversation that I
11 was not a part of?
12 **Q.** Yes.
13 **THE WITNESS:** Can I answer that question?
14 **MR. HANUSIK:** No.
15 **A.** I don't think I can answer that?
16 **Q.** Did you push back in any way in Ms.
17 Barzede's e-mail?
18 **A.** You mean with respect to Paul Weiss?
19 **Q.** Yes.
20 **A.** I don't remember subsequent conversations
21 with Paul Weiss about this issue. I don't remember.
22 **Q.** Why not?
23 **A.** Why don't I remember?
24 **Q.** No, why didn't you have subsequent
25 conversations, if you didn't?

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1 **Q.** Why do you disagree with that?
2 **A.** I am not disagreeing with that.
3 **Q.** You don't disagree with that?
4 **A.** No.
5 **Q.** We will look at some documents, but
6 nonetheless, you continued to write "common-interest
7 privilege" on transmissions to Paul Weiss after
8 receiving Mr. Barzede's e-mail; right?
9 **A.** I don't recall it. If it says that, then I
10 did.
11 **Q.** Why would you have done that?
12 **A.** Well, I am not certain that -- well,
13 again --
14 **Q.** I will represent to you that you did.
15 **A.** I don't recall how we addressed this issue
16 with Paul Weiss after receiving this e-mail, so I
17 don't know if we addressed it in such a way that we
18 continued to believe there was a common-interest
19 privilege and then marked the documents accordingly
20 or not. I just don't remember the distinction post-
21 August 1st.
22 **Q.** Did you think, after receiving Ms.
23 Barzede e-mail, that some other privilege would
24 apply to ensuing communications between Crowell and
25 Paul Weiss with respect to the expense review?

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<p>1 A. You mean a new, different privilege?</p> <p>2 Q. Yes.</p> <p>3 A. I don't believe so. I don't think this</p> <p>4 gave rise to a new theory of privilege.</p> <p>5 Q. Before August 1st of 2013, did you ever ask</p> <p>6 Paul Weiss to mark documents and spreadsheets that</p> <p>7 they sent to you as joint defense privilege or a</p> <p>8 common-interest privilege?</p> <p>9 A. Can I answer that question?</p> <p>10 MR. KEHOE: Yes, you can.</p> <p>11 A. I don't recall if we ever made a request</p> <p>12 like that to Paul Weiss. I don't.</p> <p>13 Q. Is there a reason why you would not have</p> <p>14 made such a request?</p> <p>15 A. No.</p> <p>16 Q. Did you think after receiving Ms.</p> <p>17 Barzedeh's e-mail reflected on Exhibit 22 that</p> <p>18 Apollo and Rashid were not adverse to one another?</p> <p>19 A. No, no, I think that's a fair question. It</p> <p>20 depends on how you want to define adversity.</p> <p>21 I don't think this e-mail changed the level</p> <p>22 of adversity or common interest that proceeded or</p> <p>23 followed this e-mail. What I mean by that is, I</p> <p>24 think from the beginning there was obviously an</p> <p>25 inherent adversity with respect to the concerns that</p>	<p>1 process an adversity. It's probably not the right</p> <p>2 word. I just used that word because you had used</p> <p>3 it, but clearly the SEC's examination had prompted</p> <p>4 or in part related to Apollo's concerns with Mr.</p> <p>5 Rashid. So we endeavored in this entire process, in</p> <p>6 part, to help Apollo resolve -- maybe adversity is</p> <p>7 not the word right -- the concerns the SEC may have</p> <p>8 had through their examination process, with respect</p> <p>9 to at least in part the expense issue.</p> <p>10 Whether that's general or specific as to</p> <p>11 Mr. Rashid, as I said before, I don't know.</p> <p>12 Q. So you are not saying that any concerns the</p> <p>13 SEC may have had was a source of adversity between</p> <p>14 Apollo and Rashid?</p> <p>15 MR. KEHOE: Objection to the form.</p> <p>16 A. I think that's right. I think, that's</p> <p>17 probably right. Maybe that's where I maybe had</p> <p>18 misused the word adversity.</p> <p>19 Q. So the source of adversity was the fact</p> <p>20 that Rashid was a partner or employee and Apollo was</p> <p>21 his employer and he didn't want to be terminated; is</p> <p>22 that what you are getting at?</p> <p>23 A. Let me try and answer your question.</p> <p>24 Again, I am thinking maybe adversity is not the word</p> <p>25 right for that piece of this.</p>
<p>165</p> <p>1 Paul Weiss had with Mr. Rashid or Apollo had with</p> <p>2 Mr. Rashid via Paul Weiss, concerns that the SEC had</p> <p>3 to some extent through their examination process</p> <p>4 with Paul Weiss that reflected upon their actions</p> <p>5 with Mr. Rashid and, at the same time as that</p> <p>6 adversity, an interest for both of us, meaning</p> <p>7 Apollo and Mr. Rashid, to resolve this concern about</p> <p>8 Mr. Rashid's alleged conduct, to help Apollo resolve</p> <p>9 the potential concerns they had with the SEC, and</p> <p>10 all of that and the interest of Mr. Rashid to keep</p> <p>11 his job. All of that, I would assert, was equally</p> <p>12 true on July 31st as it was on August 2nd.</p> <p>13 Q. So, your view basically is that Ms.</p> <p>14 Barzedeh's e-mail did not change anything?</p> <p>15 MR. KEHOE: Object to the form.</p> <p>16 A. I don't think that it didn't change</p> <p>17 anything, it didn't change the things I just</p> <p>18 described to you.</p> <p>19 Q. I believe in the answer that you gave</p> <p>20 before the last question, you referred to concerns</p> <p>21 that the SEC may have had being a source of</p> <p>22 adversity between Apollo and Rashid; is that</p> <p>23 correct?</p> <p>24 A. Maybe it's the adversity between the SEC.</p> <p>25 I don't know if you want to call the examination</p>	<p>167</p> <p>1 Q. What is the right word?</p> <p>2 A. So I would say there obviously developed</p> <p>3 some concern and issue that Apollo had about Mr.</p> <p>4 Rashid's expense conduct, we will call it that. I</p> <p>5 don't know, I still don't know until this day.</p> <p>6 The extent of the SEC's examination of</p> <p>7 Apollo predicated the concerns that Apollo raised with</p> <p>8 Mr. Rashid. I don't know that relationship, but I</p> <p>9 certainly know that when we were retained, our</p> <p>10 responsibility in representing Mr. Rashid was to</p> <p>11 assist him in helping Apollo resolve this issue, and</p> <p>12 we will call it adversity, with the SEC's</p> <p>13 examination; resolve Apollo's issues with respect to</p> <p>14 Mr. Rashid and the expense policy and from Mr.</p> <p>15 Rashid's perspective, doing all of that in the</p> <p>16 interest of hopefully resolving these concerns and</p> <p>17 keeping his job. I think, that's maybe a clearer</p> <p>18 way of what I was trying to say before. I apologize</p> <p>19 if it was confusing.</p> <p>20 Q. Thank you.</p> <p>21 How much time do you need for your 3:00</p> <p>22 call?</p> <p>23 MR. KEHOE: Give me 5 minutes and that</p> <p>24 would be good.</p> <p>25 Q. Let's turn to Exhibit 23 in the binder.</p>

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1 MR. THOMPSON: Exhibit 23 is Bates number
 2 Apollo 43573 to 80, and the last e-mail appears to
 3 be Mr. McGorty's e-mail, dated August 1, 7:38 p.m.
 4 to Ms. Barzede. The subject is: "Request for
 5 information."

6 So, Mr. McGorty, your e-mail was sent,
 7 what, 6 hours after Mr. Barzede sent her e-mail
 8 with respect to not being in a position to enter
 9 into a defense joint arrangement; correct?

10 A. Say that again.

11 Q. Your e-mail is dated about 6 hours or timed
 12 about 6 hours after Mr. Barzede's e-mail reflected
 13 in Exhibit 22; correct?

14 A. Yes, I am sorry. I didn't understand, yes,
 15 that seems right.

16 Q. You had had some time to cogitate on Ms.
 17 Barzede's e-mail and perhaps discuss it with your
 18 colleagues if you chose to do so; correct?

19 MR. KEHOE: Objection to form.

20 A. I don't remember when I saw that e-mail, so
 21 I don't know how much timed I had.

22 Q. Is there a reason why in your e-mail you
 23 don't say anything about her e-mail?

24 A. Nope. Not at all.

25 Q. This particular e-mail is not designated as

1 consists of e-mail Bates Numbers Apollo 109379 to 80
 2 and an attachment, Bates Number 109381, that
 3 indicates this document is available in native
 4 format. It attaches a spreadsheet.

5 BY MR. THOMPSON:

6 Q. Let's look at your e-mail, dated August 2,
 7 2013, 3:45 p.m., to Ms. Barzede, with copies to Mr.
 8 Ricciardi, Mr. Zelenko and Ms. Kotwani. It
 9 indicates, "Sipoura, please find both the master
 10 spreadsheet, which includes expenses post-April 5,
 11 2013, and a revised trip spreadsheet which has a
 12 header featuring the information you requested for
 13 each trip. In addition please find below the
 14 remaining answers to the line items on which you
 15 requested clarification."

16 Did I read that correctly?

17 A. Yes.

18 Q. Now, you sent this e-mail and its
 19 attachments after you had received Ms. Barzede's
 20 August 1 e-mail that was marked as Exhibit 22;
 21 correct?

22 A. Based on the dates, yes.

23 Q. And would it be fair to say that you knew
 24 Paul Weiss' position at that point was that no joint
 25 defense or common-interest privilege applies to your

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1 common-interest privilege, is it?

2 A. I don't think we were sending anything,
 3 were we? No, I don't think so. I think this is
 4 just a continuing chain that goes back.

5 Q. I think, this is part of the e-mail we
 6 looked at earlier?

7 A. Yes, that's right.

8 MR. THOMPSON: Let's go ahead and take a
 9 break. You need until about 3:15.

10 (Whereupon, a recess was taken.)

11 MR. THOMPSON: We are back on the record.

12 During the break, replacements copies of a
 13 couple of the exhibits came. I had indicated that
 14 on some of the exhibits, some of the text was cut
 15 off on some of the spreadsheets. I don't know if
 16 this is replacements for all of the ones that were
 17 cut off, but we do have replacements for Exhibits 19
 18 and 24, which we actually haven't gotten to so far.
 19 We are about to get to Exhibit 24.

20 Exhibit 24 includes a spreadsheet which has
 21 some of item numbers cut off. Just take it out and
 22 just substitute in these versions of Exhibit 24.

23 MR. HANUSIK: Keep the e-mail?

24 MR. THOMPSON: Right.

25 So let's go to Exhibit 24. Exhibit 24

1 communications with him.

2 A. I presumably would have seen the August 1st
 3 e-mail by then. The one you are referring to from
 4 Sipoura.

5 Q. Did you think that your transmission was
 6 protected by Rule 408 of the Federal rules of
 7 evidence?

8 A. As I said earlier, I don't remember what I
 9 believed with respect to what could have covered all
 10 of the different ways our communications post-August
 11 1st could have been protected or privileged. So in
 12 that sense, I don't remember, as I said earlier,
 13 what, if any, conversations happened with Paul Weiss
 14 subsequent to August 1st -- subsequent to that
 15 e-mail on August 1st. So I am not certain what
 16 protections exist for these communications. I don't
 17 remember what I was thinking. You are asking me
 18 what I was thinking at the time?

19 Q. Yes.

20 A. I just don't remember.

21 Q. Was a master spreadsheet still a draft at
 22 the point that you were sending this version of it?

23 A. The only distinction that I recall between
 24 -- and its more contextual from this e-mail --
 25 between a master spreadsheet and a trip spreadsheet

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1 was the fact that the trip spreadsheet categorized
2 expenses by trip, as opposed to, I guess,
3 chronologically, which I think the quote/unquote
4 master spreadsheet, if that's what you want to call
5 this.

6 **Q.** Well, that's what you called it, right?

7 **A.** I am assuming that's what this refers to.

8 Again, I don't have any reason to believe that's not
9 what this refers to.

10 So to answer your question about drafts, I
11 think that it was all a draft. It was all a draft.
12 I mean, in the sense that there were multiple
13 drafts. I don't think they ever had a final work
14 product, if you want to call it the last draft if
15 someone wants to categorize it as that.

16 **Q.** Are you aware of any draft of the master
17 spreadsheet that is later in time than this
18 attachment to Exhibit 24?

19 **A.** I am only aware of this one, because you
20 are showing it to me. So there may have been
21 others, there may not have been. I don't remember.

22 **Q.** You don't know one way or the other?

23 **A.** I don't know.

24 **Q.** Do you know what if any additional work was
25 contemplated on the master spreadsheet at the time

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1 transmitted on August 2, 2013.

2 **MR. KEHOE:** Just to be clear, you were
3 referring back to an Exhibit 10 where we had a large
4 number of objections on Exhibit 10. So that's the
5 problem.

6 **MR. THOMPSON:** I understand that, but okay,
7 we disagree on that one.

8 **Q.** If I were referring to Exhibit 10, since
9 there's been an instructions with respect to it,
10 what was the source of the information set forth in
11 the columns of Exhibit 24 that I read into the
12 record a moment ago?

13 **A.** My recollection is that most of the
14 information on this spreadsheet were accounting
15 records from Apollo.

16 **Q.** When you say most of the information, would
17 that have been the information in the "date,"
18 "merchants," "long description," "transaction
19 amount," "personal payment type" and "project name"
20 columns?

21 **A.** I believe so.

22 **Q.** With respect to the expense classification
23 column, was that a column that your firm added on
24 Ms. Rashid's behalf?

25 **A.** Answering that in the context of what we

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1 you transmitted it?

2 **A.** I do not.

3 **Q.** Keep Exhibit 24 in front of you.

4 Can you get Exhibit 10 and look back at
5 that? Are you looking at Exhibit 10?

6 **A.** Yes, sir.

7 **Q.** Please look at what's attached to the
8 exhibit, the spreadsheet that's attached. I have a
9 couple of questions. I am still trying to
10 understand the source of information that's set
11 forth in the spreadsheets now.

12 Is it correct that the information set
13 forth in Exhibit 24, the master spreadsheet for
14 "date," "merchant," "long description," "transaction
15 amount" -- I am sorry, "transaction amount,"
16 "personal payment type," and "project name," would
17 that all have been taken from the spreadsheet that
18 is included in Exhibit 10?

19 **MR. KEHOE:** Object and instruct the witness
20 not to answer the question on Exhibit 10. This is
21 dated the 17th of July.

22 **A.** Based on that instruction, I can't answer.

23 **Q.** Well, for the record, I disagree with the
24 instructions since we are talking about the source
25 of information for the master spreadsheet, which was

1 communicated to Paul Weiss on the spreadsheet, I
2 believe that that, as was expressed to Paul Weiss,
3 that that was with the category or the column where
4 we were trying to figure out what was business or
5 not or other. So that's a designation, yes.

6 **Q.** So is it correct then all of the
7 information, all of the designations in each of the
8 entries were designations that your firm made on Mr.
9 Rashid's behalf?

10 **A.** I don't know if they all are, in the sense
11 that it's conceivable that there could have been
12 information that was provided by Paul Weiss, that
13 they had or I guess for that matter BDO, that they
14 had come to some -- they had found documentation to
15 reflect how to categorize this stuff.

16 I guess my answer is, yes, the column was
17 created as part of this project, but I don't know if
18 it was exclusively populated by us. It may have
19 been.

20 **Q.** It may have been?

21 **A.** It may have been or I should say it may
22 have been populated in, again, particular line
23 items, I don't remember, by information we received
24 maybe from Paul Weiss. It's possible.

25 **Q.** If I am understanding you correctly, the

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<p>1 designations may have been informed by information 2 you received by Paul Weiss, but the entity that 3 actually made the determination, that would have 4 been your firm on behalf of Mr. Rashid?</p> <p>5 MR. KEHOE: Objection to the form.</p> <p>6 A. I think that's right, I think that's fair.</p> <p>7 Q. What did the designation "personal" denote?</p> <p>8 A. "Personal" was a designation for anything 9 that, to the best of my recollection, we actually 10 communicated to Paul Weiss; anything that we 11 couldn't determine how to document it as a business 12 purpose, and that was based on a review of calendar 13 entries, other documents. So I don't remember what 14 else we had accessed to at the time. I do remember 15 calendar entries. The American Express credit-card 16 bills, to the extent that that provided some 17 context, that's where that came from, that's where 18 the designation came from.</p> <p>19 Q. Okay. And what did the designation 20 "business" denote?</p> <p>21 A. I think that's the designation where we 22 could actually document something being a business 23 expense and the dichotomy, the distinction was 24 simply, at the point when we were doing this project 25 as communicated to Paul Weiss, we were trying to</p>	<p>1 question is slightly different. I didn't play a 2 role in that.</p> <p>3 Q. Just to be clear, do you recall any 4 discussion with Paul Weiss about the extent to which 5 expenses designated as "personal" that had been 6 previously billed as business expenses would be 7 reimbursed to private-equity funds if they bore the 8 expense?</p> <p>9 MR. KEHOE: Objection to form.</p> <p>10 Q. Do you understand the question?</p> <p>11 A. I do. To the extent that the answer to the 12 question is we had conversations where we explicitly 13 explained to Paul Weiss our methodology, that 14 personal expenses were not necessarily personal. We 15 just couldn't document them as being business, and 16 it was Mr. Rashid's intentions to write a check to 17 cover that amount in the interest of keeping his 18 job. However, I don't recall having conversations 19 with Paul Weiss about the next piece, about the 20 funds that they were associated with, if there were 21 any.</p> <p>22 Q. What does the designation "taxi/cab" 23 denote?</p> <p>24 A. I think we tried to separate that because 25 we could. Unclear, I mean it really doesn't fit</p>
<p>177</p> <p>1 allocate to business whatever we could unequivocally 2 say was documented business, and everything else we 3 categorized not as business, with the goal of Mr. 4 Rashid's intending, as I expressed to Paul Weiss, to 5 write a check for anything that could not be 6 substantiated to reimburse Apollo for, what we 7 couldn't clearly say was business expenses.</p> <p>8 Q. With respect to expenses designated as 9 business, was there any further inquiry made to 10 determine whether the expense had been passed on to 11 private-equity funds or was borne by Apollo itself?</p> <p>12 A. Not by our team. I do recall, as I said 13 earlier, to the extent where we could attribute the 14 business expense to what I believe Apollo referred 15 to as "project name," we tried to verify that so the 16 designation was proper. Theoretically, if a 17 business expense was something that was mislabeled, 18 it actually was a different project name, we would 19 try and identify that if we did go into the document 20 to determine that.</p> <p>21 So part of our project was to determine if 22 the -- part of our project was to determine how it 23 was properly designated if we could. So I don't 24 know if there were changes in the project name 25 column, there may have been, but I think your</p>	<p>179</p> <p>1 into -- I guess, it's a business expense, it's 2 theoretically a business expense. I don't remember 3 candidly if that taxicab, those expenses, fell into 4 the bucket of the other that were paying, like the 5 personal. Those were designated on the spreadsheet 6 or if they were open ended and we only -- because 7 they were taxi and/or cab expenses, we left them in 8 the potential business expense because we couldn't 9 determine that, I assume that we designated it this 10 way for a reason, but I don't remember what it was.</p> <p>11 Q. Then there is a designation of "personal 12 (Prev paid back)." What does that denote?</p> <p>13 A. Based on my conversations with Paul Weiss, 14 my understanding is that those expenses fell into a 15 category of expenses that had been subject to an 16 earlier inquiry or conversations, however you want 17 to describe it, that Apollo had with Mr. Rashid, 18 that resulted him, at that point in time, 19 reimbursing those expenses, that had previously not 20 been personal or previously not been paid by Mr. 21 Rashid. That's my best recollection.</p> <p>22 Q. Go to entry number 212. Two pages into the 23 spreadsheet, American Airline expense. Flight from 24 Miami to LA, trip from Metals USA. And in the 25 expense classification column, there appears a</p>

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<p>1 designation of "partial business expense." What 2 does that denote? 3 A. I think that I remember, as we described to 4 Paul Weiss, there were challenges with respect to 5 trips because sometimes trips weren't purely 6 business or some aspect of a trip expense could be 7 carved out to be not a business expense. So my best 8 recollection is that that's the designation we put 9 if something that was a business trip, but at some 10 point there may have been a component of it that he 11 wanted to include in the other bucket of saying I 12 should write a check back. 13 Q. Was there some allocation made with respect 14 to partial business expenses? 15 A. The question, take the line item 212, I 16 don't know or recall how that was calculated into 17 that final -- here's what we can't document 18 clearly as business expenses, so we are going to put 19 it in the "personal" or other that will result in 20 the check. I don't remember how to allocate it. 21 My guess, again it's a guess, is that we 22 put it in the other. My guess is that we put 23 everything in this other bucket that was not 24 business expenses. It just says business, I think, 25 that rings a bell to me.</p>	<p>1 something being documented, and I think that means 2 some documentation that reflects what this expense 3 was and, obviously, if it's travel or a meal or 4 something, where it was, who it was, obviously the 5 dollar amount came with the expense, so what the 6 expense was, but that's my recollection. 7 Q. Did you have any concern with the 8 completeness of Apollo's records that were made 9 available to you with respect to the proper 10 classification of an expense? For example, do you 11 have any concern that you did not have all of the 12 Amex bills or all of the calendar entries? 13 A. Sure. I mean, I think that's a very -- I 14 think that was a point that I remember thinking of 15 at the time, which is, there may be documentation 16 that could exist or that theoretically would exist 17 in some form that we don't have access to, that 18 would move things that we couldn't designate into 19 business expenses, but absent those documents, we 20 put everything in sort of the other, non-business 21 bucket, because, for example, pick a meal; we 22 couldn't determine exactly who was present, what was 23 the business purpose of that meal, we put it in 24 personal. If it was a coffee or something, it could 25 have been a coffee with a colleague that would have</p>
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<p>1 Q. I am sorry, you are referring to the other 2 bucket, is that something that -- 3 A. Everything that is not business, because I 4 think it got a business designation here if we could 5 document, based on the review of all those 6 documents, that it was clearly a business expense 7 that in this case it belongs to Metals U.S.A., or is 8 associated with that project name, using their 9 designation. 10 I am pretty sure and someone else could do 11 the math, I am pretty sure that whatever the amount 12 that Ali paid to resolve this concern, was a sum 13 total of everything else. 14 Q. Everything other than business? 15 A. Everything other than business. I am not 16 sure if I am right about taxicabs. I am not sure 17 how we handled partial business expenses, but it's 18 possible they all ended up in the other bucket which 19 was called "personal." 20 Q. In determining whether an expense could be 21 classified as business, is it the case that you did 22 make an attempt to determine the who, what, where, 23 when and why of the expense? 24 A. I don't know if I would put it in those 25 terms, but I think back to what I mean when I say</p>	<p>1 been a proper business expense, depending on 2 Apollo's views towards such an expense, but if we 3 couldn't show that it was about a particular deal or 4 project or whatever, we put it in personal meals, 5 the same thing. 6 Q. Were there any documents that you requested 7 of Apollo that were not provided, to your 8 recollection? 9 A. I don't think so. I don't think so. I 10 think we requested and they provided whatever they 11 had to help us. I don't think they withheld 12 anything. We just did the best we could with what 13 we had to categorize this stuff. 14 Q. Was there any forensic accounting firm that 15 was engaged to assist you in this process? 16 A. Well, if I recall, Apollo, working with 17 Paul Weiss, hired BDO. I feel like we were 18 assisting them, more so than they were assisting us. 19 We were attempting to fill in the blanks with these 20 documents, wherever we could. 21 Q. But Crowell did not engage a separate 22 forensic accounting firm, other than BDO? 23 A. We didn't engage BDO. 24 Q. That's a bad question. 25 A. No, no, because there was -- the record was</p>

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<p>1 the record, and the best we could do was try and 2 work with what we had at their request, meaning 3 Apollo or Paul Weiss.</p> <p>4 Q. What, again, was the purpose of the trips 5 spreadsheet?</p> <p>6 A. My recollection is that we took out, as 7 best we could, expenses that were related to 8 particular trips from the chronology, which we will 9 call the master spreadsheet, which is the term we 10 used, and categorized them by trip. We were able, 11 as best we could, to actually lay out the details to 12 who, what, where, and when, that we could, based on 13 what we received.</p> <p>14 Again, I am looking at the spreadsheets and 15 that's what I am seeing.</p> <p>16 Q. Do you recall any discussion with Paul 17 Weiss or BDO about the master spreadsheet after you 18 transmitted it on August 2, 2013?</p> <p>19 A. No. It doesn't mean we didn't, but I don't 20 recall.</p> <p>21 Q. Do you know whether Paul Weiss accepted all 22 of your designations or was additional work done?</p> <p>23 A. I don't remember.</p> <p>24 Q. Let's take a look at Exhibit 25. Exhibit 25 25 is Bates Number Apollo 109385 to 86, with an</p>	<p>1 your firm to Paul Weiss?</p> <p>2 A. I don't recall.</p> <p>3 Q. Please turn to Exhibit 26.</p> <p>4 This is a one-page document, Bates Number 5 Apollo 108719. It appears to be an e-mail from 6 Roberto Finzi to Mr. Zelenko, Mr. McGorty and Mr. 7 Little, dated October 15, 2013. Subject Ali Rashid. 8 I will give you a moment to read it, Mr. McGorty?</p> <p>9 A. Okay, thank you.</p> <p>10 (Witness reviewing document.)</p> <p>11 A. Okay.</p> <p>12 Q. Do you have any knowledge of Mr. Rashid, 13 prior to this e-mail, having met with members of 14 Apollo's executive committee concerning his 15 continuation as a partner at Apollo?</p> <p>16 A. It's not based on any communication with my 17 former client. I will say that Mr. Little's 18 involvement in the representation definitely post- 19 dated; however it was communicated to Mr. Rashid, I 20 don't remember, but their desire to separate from 21 him. Mr. Little was definitely involved after that 22 to resolve a severance issue.</p> <p>23 Q. Mr. Little was engaged to resolve the 24 severance piece?</p> <p>25 A. He was an employment lawyer. He is, I</p>
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1 attachment, and the first page is an e-mail from Ms.
 2 Kotwani to Ms. Barzede, dated August 23, 2013, and
 3 it states: "Good evening, Sippoura. Attached
 4 please find draft classifications pertaining to
 5 pending T's and E's for Mr. Rashid that have not
 6 been submitted for reimbursement."

7 The attachment, if you look at it, all the
 8 dates -- they appear to go from mid May 2013 to
 9 August of 2013. So am I correct in understanding
 10 that this pertains to expenses that were incurred by
 11 Mr. Rashid but had not been previously submitted for
 12 reimbursement?

13 **A.** That's what she said and that's what it
 14 looks like to me.

15 **Q.** So these are not expenses that Apollo would
 16 have paid or any private equity firm would have
 17 paid; is that correct?

18 **A.** Right. Right. Presumably, I don't know;
 19 some of these are business expenses, so I don't know
 20 how they were subsequently handled once we submitted
 21 it. I don't remember why we submitted it, but I do
 22 think it is what it is, as you described.

23 **Q.** Other than Exhibit 25, are you aware of any
 24 subsequent transmission of a spreadsheet or any
 25 additions or changes to the master spreadsheet from

1 believe, an employment lawyer, so, yes.
 2 **Q.** Did Crowell act as co-counsel in that
 3 engagement or were you involved in the negotiation
 4 of the separation?

5 **A.** I don't remember how much we were involved.
 6 We certainly were not taking the lead on that. I do
 7 remember attending, I think it was just me from
 8 Crowell, attending a meeting with Mr. Little. It
 9 may have been in Mr. Little's firm, Paul Weiss. I
 10 think counsel for Apollo and general counsel for
 11 Apollo was present. General counsel was present for
 12 that meeting where they negotiated a resolution and
 13 to say we were there as co-counsel would be an
 14 overstatement. I was there more for moral support
 15 in case an issue came up that related back to our
 16 efforts to resolve the matter.

17 **Q.** Would that meeting that you are recalling
 18 have occurred sometime in October 2013 or after?

19 **A.** That would be my best recollection.

20 **Q.** Would it be fair to say that prior to
 21 October 2013, your firm had not been representing
 22 Mr. Rashid in connection with negotiations of a
 23 separation agreement?

24 **MR. KEHOE:** Objection to the form.

25 **A.** Well, no, because I do think, to some

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1 extent, all of this was leading up to that. We had
2 hoped not, but if you want to draw the
3 representation of Ali Rashid to resolving his
4 employment at Apollo, I would say that started from
5 day one. I think the turn it took that made a
6 difference at the end was when Apollo had decided to
7 separate from Mr. Rashid, which happened at some
8 point, as I think I said, at some point in September
9 or October, and we brought in outside employment
10 counsel that could directly interface with Apollo.
11 I believe there were lawyers at Paul Weiss that were
12 helping as well to work through the actual terms of
13 a severance.

14 Q. Did you regard Apollo and Rashid as being
15 adverse to one another from the time that Mr. Rashid
16 was told that he would not be allowed to remain at
17 the firm?

18 A. I mean, I guess it's hard to say that there
19 was not some level of adversity when you're trying
20 to sparse out terms of a settlement. I don't know
21 if I would describe it as amicable, it probably
22 wasn't, but I do think that's fair.

23 I think the dynamics changed at that point.
24 Our efforts to settle it with respect to keeping his
25 job was no longer an option, so that changed.

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1 A. Yes.
2 Q. Did you ever affix similar headers to
3 documents that you were sending to opposing counsel
4 in the context of settlement discussions?

5 A. No, not that said that.

6 Q. That said something similar?

7 A. That reflected confidential. I would
8 describe common-interest documents, whatever the
9 designation was on those footers, I would say, but
10 we didn't have a designation that referenced Rule
11 408, if that's what you mean.

12 Q. So, in the course of your practice up until
13 October of 2013, you had never sent a document to
14 opposing counsel labeled as a settlement
15 communication?

16 A. Beyond this case?

17 Q. In any case?

18 A. I mean, I left the government in December
19 of that prior year. I don't recall, I don't recall
20 having that designation on anything I sent before
21 this time, and I would be hard pressed to think if I
22 ever used that designation since. I could have.

23 Q. Have you been engaged in settlement
24 discussions?

25 A. Sure. I mean, I can argue in many cases I

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1 Q. Up until the point Mr. Rashid was told he
2 had to leave, his hopes were dashed, up until that
3 point, the objective was keeping his job, basically?

4 MR. KEHOE: Objection to the form.

5 A. Part of it, for sure.

6 Q. Please turn to Exhibit 27.

7 MR. THOMPSON: Exhibit 27 is a document
8 bearing Bates Numbers Rashid 2499 to 2507. It's
9 titled "Separation Agreement Term Sheet." It's
10 dated October 28, 2013.

11 Q. Have you ever seen this document before,
12 Mr. McGorty?

13 A. I am sure at the time I saw a copy of the
14 draft settle agreement, so, yes, I am sure I saw it
15 at some point.

16 Q. Did you have any role in preparing this
17 term sheet?

18 A. I am sure there was an opportunity to offer
19 any factual corrections if we had any. I don't
20 remember if I had any at the time or I don't
21 remember if this is the draft that I saw. It was
22 not and is not my area of expertise.

23 Q. Is the header on this document,
24 "Confidential Settlement Communication Pursuant to
25 FRE408." Do you see that?

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1 have been involved with settlement discussions, it
2 depends on how you want to define them.
3 Q. But you don't have a practice of labeling
4 settlement communications as settlement
5 communications?

6 A. I don't know if I used that designation. I
7 don't go off the cover for other designations as
8 well. So I am not sure if I would have relied
9 truthfully on that. I just can't say that I never
10 used it. I don't want to overcommit, I may have.
11 Clearly, Mr. Little did here.

12 Q. After October 14, 2013, did Crowell
13 continue to have communications with Paul Weiss
14 concerning the expense review?

15 A. After October?

16 Q. October 14, 2013?

17 A. There was a point in time where I believe
18 there were communications between our firm and Paul
19 Weiss. I don't remember if, call it this project,
20 continued past that date. I do remember later when
21 the SEC got involved, that there were conversations
22 with Mr. Zelenko and subsequent counsel for Mr.
23 Rashid, but I don't remember anything specific.

24 Q. After October 14, 2013, did Crowell label
25 any written communication with Paul Weiss pertaining

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<p>1 to the expense review as being subject to Rule 408 2 or settlement material or some similar designation? 3 A. I don't remember what communications we had 4 with them, so I can't say how we labeled it. 5 Q. Let's turn to Exhibit 28. 6 MR. THOMPSON: Exhibit 28 bears Bates 7 Numbers Apollo 41654 through 673, and it appears to 8 be a January 8, 2014 document addressed to Mr. 9 Rashid. Have you seen this previously, Mr. McGorty? 10 A. I may have. I don't remember. I remember 11 that the format of that earlier version you showed 12 me, I am sure I saw this, but I am not certain. 13 Q. Did you have any role in the negotiation of 14 this agreement? 15 A. No. 16 Q. Did anyone else from Crowell have any role 17 in the negotiation of this agreement? 18 A. I don't believe so. It was more Mr. 19 Little. 20 Q. So I don't know if you will know, but let 21 me just direct your attention to one portion of the 22 document. On page 2 of the agreement, under 23 "incentive awards," there is a discussion of a 24 payout for incentive awards. If you go to the very 25 end of that section, on the next page there is a</p>	<p>1 documented business expense, as we described to Paul 2 Weiss. 3 So I don't know what the total was of the 4 math of the non-documented business expense, where 5 it ends up. My guess is, it ends up somewhere south 6 of 325,000, and it was rounded up to that, keeping 7 in mind again, intentionally so, what is the 8 direction of our client and, more importantly, as I 9 specifically told Paul Weiss, which I believe they 10 understood to be as well, that was paid to them in 11 this case via reduction, as opposed to Mr. Rashid 12 writing a check, and was intended by him to be paid 13 to resolve the concerns that were initially raised 14 to him about his expense-account issue and it was 15 calculated in our effort to be both cooperative with 16 them, but also in the hopes that he would keep his 17 job, which he didn't. 18 Q. Earlier in the day there were some 19 questions and answers about your knowledge of the 20 SEC examination that was occurring with respect to 21 Apollo in 2013. At some point, you did learn that 22 there was such an examination in process; correct? 23 A. Yes. 24 Q. Do you recall any agreement or 25 understanding with Paul Weiss that Paul Weiss would</p>
<p>193</p> <p>1 discussion of a deduction from that payout. 2 So if you could take -- this is fairly 3 technical and it's late in the day, my question is 4 actually, I think, fairly simple, but I do want you 5 to have the context -- well, it may not be fairly 6 simple. 7 A. You can ask the question. I think I've got 8 it so far. I am following. 9 Q. So on page 3 of the document Apollo 41656, 10 the last sentence of the carryover paragraph states: 11 "In addition to the distribution equivalence 12 otherwise payable to you after taking into account 13 the one million dollar reduction described in the 14 preceding sentence, it shall be further reduced by 15 an amount that after withholding all applicable 16 federal state and local taxes thereon, equals 17 \$325,000." 18 The question is, do you know how that 19 amount was determined? 20 A. The \$325,000? 21 Q. Yes, sir? 22 A. To the best of my recollection, that is the 23 -- it's clearly rounded off upward, I would imagine, 24 based on my recollection of what we couldn't 25 determine in our spreadsheet project to be clearly a</p>	<p>195</p> <p>1 keep your firm apprised of the status of that 2 investigation? 3 A. I am fairly certain, though I can't point 4 to a time, repeatedly asked, extending I am certain 5 past August 1st, for the purposes of my answer, 6 repeatedly asked about the status of that 7 investigation, because we were concerned about how 8 that could impact Mr. Rashid. 9 Q. Do you recall whether Paul Weiss agreed to 10 keep you informed? 11 A. I believe they did, and I believe they kept 12 us informed. 13 Q. Was there any understanding that your firm 14 or Mr. Rashid would have any role in responding to 15 questions asked by the SEC during the examination? 16 A. To a large part, I think it was our main 17 role from day one. I think part of this, to the 18 extent that there was an SEC examination or concern 19 from the SEC via an examination into this expense 20 account issue, I think our responsibilities were to 21 represent Mr. Rashid's interest, to aid Apollo in 22 addressing these concerns, and if they could be 23 addressed generally with respect to a resolution of 24 this issue internally, without specificity to Mr. 25 Rashid being identified to the SEC, all the better.</p>

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<p>1 But that was part of our job from day one.</p> <p>2 Q. Was there any understanding with Paul Weiss</p> <p>3 that you would have a say in how Apollo responded to</p> <p>4 inquiries from the SEC during the examination?</p> <p>5 A. Well, I think we had a very cooperative</p> <p>6 relationship with Paul Weiss during this whole time.</p> <p>7 I can't point to a conversation where Paul Weiss</p> <p>8 said that we actually would have a controlling say</p> <p>9 in what happened, but I never felt that we didn't</p> <p>10 have a voice in the process, on behalf of Mr.</p> <p>11 Rashid, to help guide Apollo through its response to</p> <p>12 the SEC.</p> <p>13 Q. Let's look at Exhibit 29. So Exhibit 29 is</p> <p>14 Bates Number Apollo 42345 to 46. This e-mail string</p> <p>15 ends with an e-mail from Mr. Zelenko, dated</p> <p>16 September 3, 2013, to Ms. Barzehed. You are copied</p> <p>17 on the e-mail, Mr. McGorty.</p> <p>18 A. Yes.</p> <p>19 Q. And Mr. Zelenko states: "Sipoura, have you</p> <p>20 heard anything else from the SEC and is there a date</p> <p>21 you are scheduled to report on this issue?"</p> <p>22 Do you know whether Mr. Zelenko ever</p> <p>23 received an update or response to that query?</p> <p>24 A. I don't recall. I assume he did. I would</p> <p>25 be surprised if he did not receive a response, but I</p>	<p>1 least in part, our work product, but as far as the</p> <p>2 final form, I have never seen it before, as far as I</p> <p>3 can tell.</p> <p>4 Q. Well, were you given an opportunity to</p> <p>5 comment on any draft of this document?</p> <p>6 A. I don't think so. I don't recall, nor do I</p> <p>7 expect we would have.</p> <p>8 Q. Let me direct your attention to the page</p> <p>9 Bates numbered 1303, titled "Mohammed Ali Rashid</p> <p>10 Prior Reimbursements." The second arrow point there</p> <p>11 refers to 2012 reimbursement. It states: "In</p> <p>12 December of 2011, Rashid sought and received</p> <p>13 permission from the compliance department to</p> <p>14 purchase \$100 holiday gifts for executives of</p> <p>15 certain portfolio companies. The charges for the</p> <p>16 gifts appeared on Rashid's February Amex statement.</p> <p>17 The timing of the charges prompted further inquiry</p> <p>18 by the expense manager of the yield, that instead of</p> <p>19 purchasing gifts for executives, Rashid had spent</p> <p>20 \$3,500 on a suit for his father at Zegna, a high-end</p> <p>21 clothing store."</p> <p>22 Then it continues on the next page.</p> <p>23 "When asked to produce receipts for the</p> <p>24 gifts he claimed were purchased, Rashid asked the</p> <p>25 salesman to create and forward a false receipt</p>
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<p>1 don't have a recollection.</p> <p>2 Q. Turn to Exhibit 30.</p> <p>3 MR. THOMPSON: Exhibit 30 is a document</p> <p>4 that bears Bates Numbers Apollo 1298 through 1317.</p> <p>5 It appears to be on Paul Weiss paper. It's</p> <p>6 entitled, "Apollo Global Management Expense Review</p> <p>7 Preliminary Results," and it's dated September 16,</p> <p>8 2013. Have you ever seen this document previously,</p> <p>9 Mr. McGorty.</p> <p>10 A. I have not, to the best of my recollection.</p> <p>11 Q. I will represent to you that this was part</p> <p>12 of a representation made to the Office of Compliance</p> <p>13 Inspection and Examinations at the SEC on September</p> <p>14 16, 2013. Did you know that Paul Weiss was going to</p> <p>15 make such presentation?</p> <p>16 A. I didn't know what form it was going to</p> <p>17 take, but I assumed that there was an issue, that</p> <p>18 Paul Weiss would be representing Apollo to resolve</p> <p>19 it.</p> <p>20 Q. Were you given any opportunity, you or</p> <p>21 anyone else, to your knowledge at your firm, given</p> <p>22 an opportunity to comment on this presentation</p> <p>23 beforehand?</p> <p>24 A. Well, I am assuming -- unless I am</p> <p>25 mistaken, I am assuming the substance of it was, at</p>	<p>1 reflecting the purchase of 35, quote, 'ties' for</p> <p>2 gifts." Then it continues.</p> <p>3 Was this a subject you ever discussed with</p> <p>4 Paul Weiss?</p> <p>5 MR. KEHOE: If it's during the timeframe</p> <p>6 prior to August the 1st, I instruct you not to</p> <p>7 answer.</p> <p>8 A. I don't recall having any conversations</p> <p>9 specifically about this after August 1st. So I</p> <p>10 can't answer.</p> <p>11 Q. Without telling me the substance of the</p> <p>12 conversation, do you believe you had a conversation</p> <p>13 on this subject prior to August 1st?</p> <p>14 MR. KEHOE: The same objection.</p> <p>15 A. I can't answer that.</p> <p>16 Q. Did Paul Weiss inform you or anyone else at</p> <p>17 Crowell after the fact that it had made this</p> <p>18 presentation to the SEC?</p> <p>19 A. I don't recall. They might have. They</p> <p>20 might have told us in general terms about their</p> <p>21 report to the SEC, without the details of what looks</p> <p>22 like with a PowerPoint presentation. I just don't</p> <p>23 recall.</p> <p>24 Q. Turn to Exhibit 31, which I believe is our</p> <p>25 final exhibit.</p>

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<p>1 MR. THOMPSON: Exhibit 31 is Bates numbered 2 Apollo 43560 to 61. It's an e-mail string ending 3 with the December 11, 2013 e-mail from Andrew 4 Ehrlich, to Mr. Zelenko, and the subject matter is 5 actually "common-interest privilege." 6 Q. First of all, did your firm think there was 7 still a common interest with Apollo as of December 8 11, 2013? 9 MR. HANUSIK: Objection to foundation. Mr. 10 McGorty did not write the e-mail. 11 Q. I understand you didn't write the e-mail. 12 I am just wondering what your firm thought, to your 13 recollection? 14 MR. HANUSIK: I am objecting on the 15 foundation. Mr. McGorty does not speak on behalf of 16 the entire firm. 17 Q. You can answer the question, Mr. McGorty. 18 A. So I can't say that I remember having a 19 specific recollection of my personal view on this 20 date, the December date, but the context of this 21 communication, I believe it's arguably a common- 22 interest communication. If you want to know why, I 23 can tell you. 24 Q. So looking at the e-mail string on December 25 6th, Mr. Zelenko sent an e-mail to Mr. Ehrlich</p>	<p>1 there was a presentation, but not the specifics of 2 what it looked like. This communication could very 3 well have been about any further follow-up from the 4 SEC based on Mr. Rashid, but I am not sure. 5 Q. I believe your testimony was that, before I 6 showed it to you a few moments ago, you had never 7 seen Exhibit 30; is that right? 8 A. I don't recognize it, no. It doesn't mean 9 that I had not heard about the presentation. I just 10 don't remember. 11 Q. I believe you previously testified that 12 your firm represented Mr. Rashid in connection with 13 the SEC's investigation of misconduct while at 14 Apollo; correct? 15 A. Yes. 16 Q. And that work would have been done in 2016 17 and 2017, was it? 18 A. I believe so. I believe so. 19 Q. Did the representation come to an end on or 20 about October 16, 2017? 21 A. I don't remember the date. My 22 understanding is we were no longer representing Mr. 23 Rashid in his case with the SEC at some point late 24 last year. That sounds right, I just don't have the 25 date. I wasn't involved with the day to day.</p>
<p>201</p> <p>1 stating Andrew, or asking "Andrew, any update from 2 the SEC? Thanks." 3 And then on December 11th, apparently 4 having received no response, it says, "Andrew, just 5 following up to see whether there have been any 6 developments on the SEC front. Thanks." 7 Then, on December 11th, Mr. Ehrlich writes 8 back: "Dan, sorry for the delay, I have been 9 traveling. No development of note." 10 So is it the case that as of December 11, 11 2013, your firm still didn't know about the 12 presentation that had been made to the SEC by Paul 13 Weiss that is reflected in Exhibit 30, the 14 presentation that had been made on September 16, 15 2013? 16 A. Well, I don't have any recollection at all, 17 but definitely no, based on these e-mails. I do not 18 believe you could reach that conclusion at all, the 19 conclusion that we were unaware of the September 20 presentation, based on this e-mail. 21 Q. So you think you may have been aware of the 22 September presentation based on this e-mail? 23 A. I don't know one way or the other. As I 24 said earlier, when you asked me about our knowledge 25 of the presentation, we may have been aware that</p>	<p>203</p> <p>1 Q. I take it that Apollo didn't pay for your 2 firm's bills for work that they did for Rashid in 3 2016 and 2007? 4 MR. KEHOE: Objection. What is the 5 relevance of this. 6 Q. You can answer. 7 A. Yes. I wouldn't imagine that they did, no. 8 Q. Rashid himself was paying those bills? 9 MR. KEHOE: I am going to object and 10 instruct you not to answer any questions on that. 11 MR. THOMPSON: What is the basis for that 12 instruction? 13 MR. KEHOE: To the extent it impacted his 14 relationship, the attorney-client with Rashid during 15 the time, he has already said that Apollo is not 16 paying the bills. What difference does it make who 17 is paying the bills here? If he is getting it from 18 a third party, he is getting it from himself, what 19 difference does it make. 20 MR. THOMPSON: Well, that may be, but a 21 relevance objection is not a basis to instruct the 22 witness not to answer. Communications about 23 payments or bills are not subject to any privilege, 24 as you well know. 25 A. It depends who the source of the</p>

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<p>1 communication would be right. So I don't know the 2 answer to your question. 3 Q. You don't know whether Rashid paid all the 4 bills? 5 A. I do not know the answer to that question. 6 Q. Did Rashid have any insurance that paid any 7 portion of the bill? 8 A. I don't know. 9 Q. Has Rashid ever indicated to your firm, 10 directly or through counsel, that he was considering 11 any type of legal claim against your firm in 12 connection with its prior representation of him? 13 MR. KEHOE: Objection. Covered by the 14 privilege and instruct him not to answer. 15 A. I can't answer. 16 Q. I don't know what imaginable privilege that 17 could be covered by. 18 MR. KEHOE: You can imagine it's 19 attorney-client privilege, we will go with that and 20 I instruct him not to answer. 21 MR. THOMPSON: It certainly would not be 22 attorney-client if they were adverse and considering 23 a legal claim. 24 I would ask Tom, you are the actual counsel 25 here. I have not heard you instruct him not to</p>	<p>1 Q. I am using insurance speak. I am sorry. 2 Does your firm have some governing body 3 that deals with potential professional liability 4 claims? 5 A. Sure. When there is a professional 6 liability claim, it's raised to our internal general 7 counsel, I would imagine. 8 Q. Has there been any notification to your 9 general counsel of a potential claim by Mr. Rashid 10 against the firm? 11 A. Not that I'm aware of. 12 Q. Okay. With respect to communications that 13 you had with Mr. Rashid, his wife and his sister, we 14 had looked at that previously, it was in Exhibit 1A, 15 I am not sure you need to get it in front of you 16 again, did you believe that that call was subject to 17 an attorney-client privilege -- those calls? 18 A. I appreciate how the presence of a third 19 party could make it -- I don't recall doing an 20 analysis on whether that call was privileged or not. 21 I don't remember what was discussed. 22 Q. You don't remember what was discussed at 23 all? 24 A. I don't remember. 25 Q. Let me try to probe you a little bit.</p>
<p>205</p> <p>1 answer and I don't believe that this event, post- 2 representation would be something that Mr. Kehoe 3 could actually decide. 4 MR. KEHOE: You didn't narrow the question. 5 You asked whether or not there was ever a question 6 -- a conversation between Mr. McGorty and counsel 7 about bringing legal action -- Mr. Rashid. 8 MR. THOMPSON: Let me do that. That's a 9 fair point. Let me do that. 10 Q. Subsequent to your firm's termination by 11 Mr. Rashid, are you aware of any communication on 12 behalf of Mr. Rashid to your firm, indicating that 13 Mr. Rashid was considering bringing a malpractice 14 claim? 15 A. No. 16 Q. Has Crowell notified its carrier that it 17 could be subject to a malpractice claim? 18 A. Not to my knowledge. 19 Q. Does your firm have any governing body that 20 needs to be informed when there is an occurrence 21 that might give rise to such a claim? 22 A. I don't understand your question. 23 Q. Is there any part of your firm -- 24 A. I understood that part. The part I don't 25 understand is "occurrence."</p>	<p>207</p> <p>1 Do you recall there being any discussion of 2 Rashid's sister being a recipient of gifts from Mr. 3 Rashid? 4 MR. KEHOE: Objection to the form. 5 A. I don't recall. 6 Q. Do you recall any discussion of her being 7 present at dinners that Mr. Rashid had billed as 8 business expenses? 9 MR. KEHOE: Objection to form. 10 A. I don't recall. 11 Q. Do you recall any discussion of her being 12 present on trips that Mr. Rashid had billed as 13 business expenses? 14 MR. KEHOE: Objection to the form. 15 A. I don't recall. 16 Q. You indicated before that Rashid's sister 17 was concerned about the situation. Can you 18 elaborate on what the concern was? 19 A. She was concerned about her brother. I 20 mean, I think the concern that I referenced was the 21 concern that any team member would have for somebody 22 who was going through this kind of circumstances. 23 Q. If you look back -- I do want you to look 24 back at Exhibit 1A, for one thing. 25 A. Yes.</p>

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1 **Q.** The very last entry on the last bill on
2 page CMAR SEC 33 --
3 MR. HANUSIK: Second-to-last bill.
4 MR. THOMPSON: You are right. The
5 second-to-last bill.
6 **Q.** There is a reference to a November 27, 2013
7 telephone call that Mr. Zelenko had with client and
8 M. Hilzik, H I L Z I K. Do you know who M. Hilzik
9 was or is?
10 **A.** I don't.
11 MR. THOMPSON: Let's go off the record.
12 (Off the record.)
13 MR. THOMPSON: Go back on the record.
14 BY MR. THOMPSON:
15 **Q.** Let me direct you to page CMAR SEC 35.
16 This is a statement of account as of January 15,
17 2014, and there is another entry for Mr. Zelenko on
18 December 4, 2013. It says: "Review of Hilzik
19 retention letter and correspondence with client."
20 Do you have an understanding of that
21 reference?
22 **A.** I don't.
23 MR. THOMPSON: Let's go off the record.
24 (Whereupon, a recess was taken.)
25 MR. THOMPSON: Back on the record.

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1 defense clarification, you know, "personal,"
2 "business," when you say "personal," do you know
3 that every designation that was in this spreadsheet
4 and designated as "personal" was, in fact, a
5 personal expense?
6 **A.** No.
7 **Q.** Explain that for us.
8 **A.** So we decided and conveyed to Paul Weiss
9 collectively, we worked with our client and what was
10 conveyed to Paul Weiss was that anything that we
11 could not show was clearly a documented business
12 expense and therefore we put it in the business
13 category, was placed in this other "personal"
14 category, because it was our belief and our client's
15 intention that to resolve the concern that Apollo
16 had, he would, at least in part to resolve it, he
17 wanted to reimburse them for anything that could not
18 be documented clearly as a specified business
19 expense. That's what "personal" meant.
20 **Q.** So when you came up to with the number of a
21 payback that counsel raised to you previously, I
22 think it was \$325,000; was that right?
23 **A.** That was the number on the severance
24 agreement.
25 **Q.** Is it your testimony that that is a

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1 BY MR. THOMPSON:
2 **Q.** Mr. McGorty, during the break did you have
3 any discussion with Mr. Kehoe.
4 **A.** We spoke.
5 MR. KEHOE: You said you were finished
6 questioning, did you not?
7 MR. THOMPSON: No, I would said we would
8 take a break.
9 **A.** We spoke briefly.
10 **Q.** What did you say?
11 **A.** The fact that he said it was not going to
12 be much longer before we were done.
13 **Q.** Anything else?
14 **A.** No.
15 **Q.** Mr. McGorty, I don't have anymore questions
16 for you right now.
17 EXAMINATION BY
18 MR. KEHOE:
19 **Q.** Mr. McGorty, I am going to go back and go
20 through some of the issues that were raised by
21 counsel. The first thing I would like you to take a
22 look at was Exhibit 24, the spreadsheet that you
23 were talking about this afternoon.
24 **A.** Okay.
25 **Q.** Now, just stay on the front page, the

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1 completely accurate portrayal of how much personal
2 expenses was owed back to Apollo or was it his
3 attempt to resolve this once and for all
4 financially?
5 **A.** The latter. If that number was derived by
6 our efforts here and it's the sum total of all the
7 personal things designated "personal" in the
8 spreadsheet, then that number is largely
9 overinflated and part of Mr. Rashid's efforts to
10 resolve it, and based on what we couldn't determine
11 to be clearly a business expense.
12 **Q.** So if the SEC at trial were to rely on the
13 numbers coming from these spreadsheets as to what
14 the actual personal expenses were, that number would
15 be not only inaccurate but very inadequate?
16 **MR. THOMPSON:** Objection as to form. It
17 calls for a legal conclusion.
18 **Q.** Right?
19 **A.** Yes.
20 **Q.** So the fact is that it would be very
21 adequate; wouldn't it?
22 **MR. THOMPSON:** The same objection.
23 **A.** You can't rely on that for that purpose.
24 You can't rely on what is designated "personal" here
25 for that purpose.

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<p>1 Q. Is the reason for that, was it that he was 2 attempting to pay back money in order to keep his 3 job? 4 A. Yes. 5 Q. Let me ask you some questions about the 6 Upjohn warning from counsel. Upjohn warnings had 7 been given to Mr. Rashid, counsel had asked you 8 those questions, and you were -- and the firm, when 9 I say the firm, Crowell, you were retained 10 thereafter? 11 A. That's right. We are retained at the time 12 of the interview. 13 Q. If I can go to the document from SEC 1A and 14 we go to the first bill, that transmission of advice 15 to or discussions with Mr. Ali began on July the 16 2nd, 2013? 17 MR. THOMPSON: Sorry, what page are you 18 looking at? 19 MR. KEHOE: First billing page -- excuse 20 me, I will give it to you, it is page 5. 21 A. So the first entry on the bill reflects a 22 telephone call between -- they were involving me and 23 my partner Dan Zelenko on July 2nd, about Mr. 24 Rashid. 25 Q. Thereafter, there is a call with Paul Weiss</p>	<p>1 that the role of Crowell & Moring was just as a 2 conduit of information to Paul Weiss or any other 3 representative for Apollo? 4 A. No, and the fact of the Upjohn warning had 5 no bearing on our representation at all. 6 Q. What was your understanding as to how you 7 were protecting the interests of your client, Mr. 8 Rashid? 9 A. Well, we were representing him and his 10 interest exclusively, and to the extent that we were 11 engaging in an effort to help him keep his job, we 12 were engaging in communication with Paul Weiss, we 13 were reviewing documents, ultimately we were working 14 with Mr. Rashid to review documents to provide 15 information to Paul Weiss in connection with their 16 representation of Apollo and in an effort to resolve 17 Apollo's concern with Mr. Rashid. 18 Q. Now, at the time that you were representing 19 Mr. Rashid, did you become aware at the beginning or 20 shortly thereafter that the SEC enforcement was 21 doing an examination of Apollo? 22 MR. THOMPSON: Objection. Assumes facts 23 not in evidence. 24 A. I don't recall -- I recall being aware of 25 some involvement of the SEC doing an investigation</p>
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<p>1 on the 3rd? 2 A. Yes. 3 Q. And Mr. Zelenko and you and -- there's 4 another conference call between you, Mr. Zelenko and 5 the client on the 3rd? 6 A. Yes. 7 Q. It goes on for many, many entries prior to 8 the actual retention letter being signed on July the 9 12th of 2013, does it not? 10 A. Yes. 11 Q. Prior to the actual retention letter being 12 signed, was it your understanding that you had an 13 attorney-client relationship with Mr. Rashid going 14 back to July the 2nd? 15 A. Yes. 16 Q. Now, starting with July the 2nd and after 17 Mr. Rashid had received Upjohn warnings, was it your 18 understanding that you were supposed to be some 19 conduit of some information that came your way with 20 Paul Weiss? 21 MR. THOMPSON: Objection as to form. 22 Q. Was it your understanding, after the Upjohn 23 warnings had been given to Mr. Rashid, prior to your 24 retention I think you testified in response to 25 questions by SEC counsel, was it your understanding</p>	<p>1 on Apollo from the beginning. I don't recall a time 2 where I didn't have that knowledge in this case. 3 Q. Counsel just argued that there was a fact 4 not in evidence, so we will just talk about one of 5 the exhibits that he put in evidence? 6 A. Okay. 7 Q. If I may, I just have to find it for a 8 second. It's Mr. Zelenko letter to Mr. Norman. 9 A. That's the one that I don't have. 10 Q. If you turn to the second full paragraph, 11 the Bates stamp number is 1376, the letter from Mr. 12 Zelenko to Ms. Norman, dated November 18, 2016. It 13 notes that: "To begin with, we take issue with the 14 factual statements in the staff's letter" -- first, 15 Mr. Rashid -- this is the third sentence down -- was 16 paid his full base salary and benefits on July the 17 1st, 2013 to October of 2013. During this time 18 period Mr. Rashid was asked to cooperate fully with 19 the investigation being conducted by Paul Weiss and 20 its outside forensic accounting firm BDO. He was 21 placed on leave in part that so he could have time 22 to assist Apollo in its expeditious review of 23 certain expenses for 2011, 2013 period, that were 24 the subject of a related SEC examination at the 25 time.</p>

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<p>1 Do you see that, sir?</p> <p>2 A. Yes.</p> <p>3 Q. To your recollection, and this was written</p> <p>4 by Mr. Zelenko, to your recollection is that</p> <p>5 accurate?</p> <p>6 A. Yes.</p> <p>7 MR. THOMPSON: For the record, the basis of</p> <p>8 my objection to the question about 3 questions ago</p> <p>9 was that you referred to an examination or</p> <p>10 investigation by the SEC Division of Enforcement.</p> <p>11 There is no foundation for that, to the contrary.</p> <p>12 MR. KEHOE: No speeches.</p> <p>13 MR. THOMPSON: I am entitled to make my</p> <p>14 objection. You asserted that I made a factual</p> <p>15 representation that I did not.</p> <p>16 MR. KEHOE: Of course you did.</p> <p>17 MR. THOMPSON: The question is still</p> <p>18 objectionable because you referred to an objection</p> <p>19 of the Division of Enforcement.</p> <p>20 Q. During the period of time that you were</p> <p>21 retained, Mr. Rashid is being examined by Apollo for</p> <p>22 his expenses; is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. And you are representing him in an effort</p> <p>25 to try to keep his job.</p>	<p>1 Q. You referred to it some other way?</p> <p>2 A. I think that's right.</p> <p>3 Q. Was your goal to resolve any dispute that</p> <p>4 Mr. Rashid may have had with Apollo, with the hopes</p> <p>5 of keeping his job?</p> <p>6 A. Yes.</p> <p>7 Q. Was your goal to try to settle that dispute</p> <p>8 in order for him to keep his job?</p> <p>9 A. Yes, and more specifically, that was the</p> <p>10 purpose of our calculation of this dollar amount</p> <p>11 that he would pay Apollo, partly to settle this, so</p> <p>12 to keep his job.</p> <p>13 Q. Would it be fair to say that during this</p> <p>14 entire time frame, both parties were getting</p> <p>15 something from this relationship, Rashid having the</p> <p>16 hope of settling this dispute to keep his job by</p> <p>17 paying back money, and Apollo, getting information</p> <p>18 to resolve their exam with the SEC?</p> <p>19 A. That's fair. Yes.</p> <p>20 Q. If I am wrong in any of my questions,</p> <p>21 correct me.</p> <p>22 A. No, I would be the first to correct you.</p> <p>23 That was great.</p> <p>24 Q. Let's go back to clarify this. You have</p> <p>25 been in many settlement negotiations during your</p>
<p>217</p>	<p>219</p>

1 **A.** That was from his perspective and goal,

2 yes.

3 **Q.** According to Mr. Zelenko's letter, Mr.

4 Rashid was even given time off so he could cooperate

5 with that investigation; right?

6 **A.** That's what he was doing, yes.

7 **Q.** And during this period of time, while he

8 was cooperating, he was cooperating with Apollo

9 because they were subject to an SEC examination?

10 **A.** That's correct.

11 **Q.** So we have this situation where you were

12 representing your client to try to keep his job, not

13 get fired, and also helping Apollo when they are

14 under review during an SEC exam?

15 **A.** That's right.

16 **Q.** This is the substance of what you -- is

17 this the substance what you believe was the common

18 interest that you had with Paul Weiss and Apollo?

19 MR. THOMPSON: Objection as to form.

20 **A.** Yes.

21 **Q.** Now under any of these circumstances,

22 beginning with you being retained, and I think you

23 testified on direct examination you were brought in

24 to resolve this expense issue?

25 **A.** I think that's how I referred to it.

1 career; have you not?

2 **A.** Settlement of?

3 **Q.** Cases.

4 **A.** Sure.

5 **Q.** I noticed from your resume that it was put

6 in as Exhibit B that this is not your first rodeo?

7 **A.** Correct.

8 **Q.** So during all of those communications,

9 going back and forth with all of the entities that

10 are involved in a settlement, do you always put that

11 this is subject to Rule 408 restrictions?

12 **A.** No.

13 **Q.** Is it often the case that when you are

14 negotiating a settlement it's understood that these

15 are all part of settlement negotiations?

16 **A.** The label does not make it a settlement

17 negotiation.

18 **Q.** What makes it a settlement negotiation?

19 **A.** The purpose of the communication.

20 **Q.** If the purpose of the communication is

21 settlement, is it protected by Rule 408?

22 MR. THOMPSON: Objection as to form. Calls

23 for a legal conclusion.

24 **A.** That's my understanding. That's my belief

25 and practice. For example, if Mr. Little's

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<p>1 communication with drafting the severance agreement 2 did not include that line, it would be no less of a 3 document in furtherance of a settlement. 4 Q. You are talking about the exhibit that 5 counsel just put in. Let's clarify that. 6 A. It's 27. 7 Q. 27. Thank you. I love when the witness 8 tells me my exhibits. 9 So when you are talking about Exhibit 27, 10 so when you are looking at that, is it your 11 testimony that whether or not Mr. Little put 12 "confidential settlement communications pursuant to 13 Federal reference 408" doesn't determine whether or 14 not it's subject to Rule 408? 15 MR. THOMPSON: Objection to form. Calls 16 for a conclusion. 17 A. That is my belief. 18 Q. Now, let's talk a little bit about this 19 common-interest privilege. What is the need for 20 that? Why did you believe that that was the case 21 and why did you think that was necessary in a case 22 like this? 23 A. Well, when you are engaged in a task that 24 involves or includes relating what would otherwise 25 be a protected communication, vis-a-vis any</p>	<p>1 warning that they had prior to your retention? 2 A. I had no basis, based on my experience, to 3 believe that the Upjohn waring that Mr. Rashid, I 4 assume was given at that interview, applied beyond 5 that interview. 6 Q. Let me ask you, in your entire career, 7 absent a specific allocution to that regard, have 8 you ever practiced law, such as an Upjohn warning 9 given at one meeting carried through to every other 10 contact with that person? 11 A. No. 12 Q. As we move forward, you have this situation 13 where you're promoting candor for what you think is 14 the common interest, and you were putting it on your 15 documents and prior to this e-mail, at 1:31 p.m., on 16 August 1st, 2013, had Paul Weiss ever objected to 17 the designation of common interest? 18 A. No. 19 Q. I told you I am going faster than what you 20 thought. 21 A. I appreciate it. 22 Q. Counsel asked you questions about whether 23 or not there was a discussion with Paul Weiss as to 24 what potential claims Apollo could have against Mr. 25 Rashid; do you recall that?</p>
<p>221</p>	<p>223</p>

1 communications with a client, and you are
 2 communicating that to a third-party increase for
 3 another purpose and that purpose affords you
 4 protection, it's in everyone's interest, I think, to
 5 avail yourself of that protection for your client or
 6 the other side, their client, from disclosure that
 7 is beyond the scope of the common-interest agreement
 8 or group or it's more than one working parts.
 9 **Q.** Does it promote candor in situations such
 10 as this with Paul Weiss when you are attempting to
 11 resolve the dispute for your client and then to get
 12 information for the SEC exam?
 13 **A.** That's the point of that in part, sure.
 14 **Q.** Why is that?
 15 **A.** Because you have some protection built into
 16 this understanding, common-interest understanding,
 17 that you can represent and present information that
 18 would otherwise be protected, exclusively if it
 19 remained with your client, if that's the main source
 20 of communication to a third party.
 21 **Q.** Was it ever your belief after these Upjohn
 22 warnings have been given to Mr. Rashid, that every
 23 conversation that you may have had on Mr. Rashid's
 24 behalf or Mr. Rashid might have had at any of these
 25 meetings with Paul Weiss was subject to that Upjohn

1 **A.** Yes.
 2 **Q.** Was there a discussion with them at some
 3 regard, post-August 1st of 2013, to your
 4 recollection?
 5 **A.** The best that I can say about that, the
 6 best of my recollection is that there were some
 7 conversations or conversations where there was
 8 discussion involving Paul Weiss that related to the
 9 seriousness of the conduct from their perspective,
 10 and the notion that it could give rise to legal
 11 action, but I don't have any recollection of
 12 specifics.
 13 **Q.** Well, in your mind as a seasoned litigator,
 14 did that raise some concern on your behalf to
 15 attempt to settle this with as good terms as
 16 possible for your client?
 17 **A.** Yes, but as I said earlier, that concern,
 18 based on my experience, did not derive from
 19 conversations I had with Paul Weiss, whenever they
 20 may have been, it derived from day one of the
 21 representation, the understanding and concern about
 22 the ramifications of what the allegations were that
 23 had been made to Mr. Rashid in the interview before
 24 we were retained. So the very core of the conduct
 25 at issue here was what informed my concern about

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1 potential claims, not merely a subsequent
2 conversation with Paul Weiss about it.
3 **Q.** Independent of any conversation with Paul
4 Weiss, you would have had those concerns?
5 **A.** I did have those concerns.
6 **Q.** You did have those concerns?
7 **A.** Yes.
8 **Q.** So just going back to the actual sheet
9 itself, the actual sheet itself, and you came to put
10 together what is now Exhibit 24, and you put those
11 things into all of the various categories of
12 "personal," "business," "taxicabs," were all of
13 those efforts done to attempt to settle any claim
14 that Apollo or anyone else might have against Mr.
15 Rashid?
16 **A.** Yes, in parts.
17 **Q.** What else, what is the other part?
18 **A.** To assist Apollo in whatever concerns the
19 SEC had with them in their investigation -- their
20 examination.
21 **Q.** So in your way of thinking, as a lawyer,
22 you were settling a case, attempting to keep his
23 job, and you were giving information to Apollo, in
24 order for them to resolve their matter with the SEC?
25 **A.** Although they are really not two distinct

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1 this?
2 **A.** Yes.
3 **Q.** Let's just go through it. "Rashid has
4 cooperated fully with Apollo, Paul Weiss and BDO at
5 all stages of the process; is that true?"
6 **A.** Yes.
7 **Q.** Was that part of your settlement efforts
8 when you were working on his behalf?
9 **A.** Absolutely.
10 **Q.** Next bullet point: "He has spent
11 considerable time reviewing his expenses to
12 reclassify charges as personal in the first instance
13 and to group travel-related expenses so that they're
14 associated truth."
15 Is that true? Did you spend considerable
16 time doing that?
17 **A.** A lot of time.
18 **Q.** Did you do that at the request of Apollo?
19 **A.** Yes.
20 **Q.** This one: "He has endorsed an
21 overinclusive approach to the effect that we believe
22 maybe substantially overstate the amounts being
23 properly charged as a business expense."
24 MR. THOMPSON: I think you misquoted the
25 statement.

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1 things. We were hoping to provide information to
2 Apollo for their purposes, which included addressing
3 the SEC concern, all with the goal of resolving
4 their claim against Mr. Rashid and helping him to
5 keep his job, hopefully keep his job, which did not
6 work out, obviously.
7 **Q.** Turn to document 30. I want you to address
8 a portion of the document that counsel for the SEC
9 did not point out to you, and what I am looking at,
10 this is a Paul Weiss Apollo/Global Management
11 expense review. Do you see that?
12 **A.** Yes.
13 **Q.** I think you noted, of course, that you had
14 not seen this?
15 **A.** I have not seen this, to my best
16 recollection, I didn't see it before today.
17 **Q.** I want you to turn to 1316.
18 Do you see that, sir, it's number 2,
19 Rashid's cooperation with Apollo's investigation?
20 **A.** Let me just read it.
21 **Q.** Please take your time to read it.
22 (Witness reviewing document.)
23 **A.** Yes, this is -- I don't think I have seen
24 this before.
25 **Q.** This is the first time you are reading

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1 **MR. KEHOE:** I'm sorry. Let me read that
2 again. My apologies to the Court Reporter.
3 **Q.** "He has endorsed an overly inclusive
4 approach to the effort that we believe may
5 substantially overstate the amounts improperly
6 charged as business expenses."
7 Now, the words "overly inclusive," that's
8 Paul Weiss' comment here; right?
9 **A.** Yes.
10 **Q.** And is that what you did? Did you put an
11 overly inclusive approach to the effort that may
12 have substantially overstated the amounts improperly
13 charged?
14 **A.** Yes.
15 **Q.** Was that consistent, Mr. McGorty, with your
16 prior testimony that the last spreadsheet that we
17 were looking at in Exhibit 24 is inaccurate?
18 **A.** Inaccurate, in the sense that, as I
19 described here, yes, I agree.
20 **Q.** Inaccurate in what sense?
21 **A.** It is inaccurate to the extent that it
22 calculates personal expenses that are personal
23 expenses. It is created consistent with what Paul
24 Weiss apparently represented to the SEC, which is
25 that we undertook an overly inclusive approach, as I

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1 said earlier, everything that we couldn't clearly
2 document as a business expense in an effort to
3 resolve the concern that they had with Ali Rashid,
4 in the hopes that he could keep his job, which by
5 definition overstated the amount that should have
6 been properly characterized as "personal."

7 This is the first I have ever seen this. I
8 am glad that he passed along that clear instruction
9 and directive that we gave them as far as what we
10 were doing.

11 Q. So, if we go back to Exhibit 24, this
12 spreadsheet presented by counsel, if the SEC at
13 trial presented this spreadsheet as an accurate
14 assessment of what Mr. Rashid owed or did not owe,
15 would that document be accurate and truthful?

16 MR. THOMPSON: Objection as to form. Calls
17 for a legal conclusion and an evidentiary
18 conclusion.

19 Q. You can answer it.

20 A. That spreadsheet and any spreadsheet we
21 provided to Paul Weiss would include an
22 overstatement of what was actually a personal
23 expense. That's true.

24 MR. KEHOE: Let me take a five-minute break
25 to talk to my co-counsel here.

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1 Q. None whatsoever?

2 A. I really don't.

3 Q. So You don't know if the overstatement is 2
4 percent or 20 percent?

5 MR. KEHOE: Objection to the form.

6 A. Or more.

7 Q. Or less?

8 A. Or less.

9 Q. When you say you think that Exhibit 24, the
10 master spreadsheet, reflects an overstatement of
11 expenses labeled as "personal," are you aware of any
12 actual expense entries that you would say reflect an
13 overstatement?

14 A. I think to answer that question in either
15 direction, overstatement or understatement, if I had
16 that knowledge it would be based on attorney-client
17 communications and I don't reveal it.

18 Q. So it's possible there were some
19 understatements as well?

20 A. You mean there are things that were
21 determined to be business that should have been
22 personal.

23 Q. Yes.

24 A. No, I don't think so, because it only made
25 it into business if we really had some documents

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1 (Whereupon, a recess was taken.)

2 MR. THOMPSON: Back on the record.

3 MR. KEHOE: I am true to my word. That's
4 all the questions that I have for you.

5 MR. THOMPSON: Mr. Hanusik, are you going
6 to have any cross?

7 MR. HANUSIK: No.

8 MR. THOMPSON: I have got a very brief
9 redirect.

10 BY MR. THOMPSON:

11 Q. Mr. McGorty, with respect to the master
12 spreadsheet that is Exhibit 24 overstating the
13 amount of personal expenses, do you have any
14 estimate of how much of an overstatement it was,
15 what percentage may have been truly personal
16 expenses and which may have been expenses that were
17 labeled as personal erring on the side of over
18 inconclusiveness?

19 MR. KEHOE: You are asking him to
20 speculate. I am going to object to speculation.

21 MR. HANUSIK: I am asking him the question
22 I asked.

23 MR. KEHOE: That's speculation. I object.

24 A. I don't know. I have no way of knowing
25 what the accurate number is.

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1 that reflected it was a business expense. So I
2 would say, again, with the goal of only putting
3 things into business that we had some objective
4 evidence of, I would say it's unlikely that there
5 are things that are counted as business that should
6 not be.

7 Q. Would it surprise you if it turned out that
8 BDO's review identified expenses that your review
9 had classified as business that were, in fact,
10 personal expenses?

11 MR. KEHOE: Objection to the form.

12 A. I don't know what they were looking at. I
13 just know what we were looking at, so I don't know
14 the scope of their review, so I can't say I would be
15 surprised. I would be surprised if, for example,
16 you told me that a dinner for which there was a
17 counter entry that reflected attendees from a
18 business relationship, something that you and I
19 would agree was a business expense, if it turned out
20 that they determined that was not a business
21 expense, I wouldn't know what criteria they were
22 using, so I can't tell you I would be surprised, it
23 would depend.

24 Q. Let's take your example, if it turned out
25 there was a calendar entry or an expense report

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1 ERRATA SHEET
 2 Deposition of: GLEN MCGORTY
 3 Date taken: October 30, 2018
 4 Case: SEC vs. Ali Rashid, et al.
 PAGE LINE
 4 _____ CHANGE: _____
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 5 _____ CHANGE: _____
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 24 Signed _____
 25 Dated _____

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1 STATE OF NEW YORK)
 2) SS
 3 COUNTY OF SUFFOLK)
 4
 5 I, hereby certify that the witness in the
 6 foregoing deposition GLEN MCGORTY, ESQ., was by me
 7 duly sworn to testify to the truth, the whole truth
 8 and nothing but the truth, in the within-entitled
 9 cause; that said deposition was taken at the time
 10 and place herein named; and that the deposition is a
 11 true record of the witness's testimony as reported
 12 by me, a duly certified shorthand reporter and a
 13 disinterested person, and was thereafter transcribed
 14 into typewriting by computer.
 15 I further certify that I am not interested
 16 in the outcome of the said action, nor connected
 17 with nor related to any of the parties in said
 18 action, nor to their respective counsel.
 19 IN WITNESS WHEREOF, I have hereunto set my
 20 hand this 2nd day of November, 2018.
 21 Reading and Signing was:
 22 xx requested __ waived __ not requested
 23

MONIQUE CABRERA

24
25

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